TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1914

No. [redacted] 146

LEHMAN, STERN & COMPANY, LIMITED, PLAINTIFF IN ERROR,

vs.

S. GUMBEL & COMPANY, LIMITED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED APRIL 15, 1915.

(23,635)

(23,635)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 512.

LEHMAN, STERN & COMPANY, LIMITED, PLAINTIFF IN ERROR,

vs.

S. GUMBEL & COMPANY, LIMITED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 9, 1913.

1 *Petition of Lehman, Stern & Company Filed in the Civil District Court.*

To the Honorable the Judges of the Civil District Court in and for the Parish of Orleans, State of Louisiana:

The petition of Lehman, Stern and Company, Limited, a corporation organized under the laws of this State and domiciled in the City of New Orleans, said State, appearing herein through its President, Maurice Stern, respectfully shows:

That the commercial firm of E. Martin and Company of this City, composed of Eugene Martin, Sr., Eugene Martin, Jr., Gayarre Martin and Francis Martin, and the said individual members thereof are justly and truly indebted to your petitioner in solido in the full sum of Nineteen thousand, two hundred, thirty-eight dollars and fifty-three cents ($19,238.53) with interest and privilege as hereinafter set forth, for this, to-wit:

That on March 12, 1912, your petitioner was the owner of one hundred, twenty-three (123) bales of cotton marked G O O D which were represented by a bill of lading issued by the Yazoo and Mississippi Valley Railroad Company at Vicksburg, Mississippi, upon the 9th day of March, 1912, to D. J. Schlenker and Company to order, notify Lehman, Stern and Company, New Orleans, said bill of lading being duly endorsed by said Schlenker and Company; that on the 12th day of March, 1912, in the City of New Orleans, petitioner sold for cash to said E. Martin and Company the aforesaid one hundred and twenty-three bales of cotton for the sum of six thousand, seven-hundred, eighty-three dollars and sixty-four cents ($6,783.64) the price at which said cotton was sold, the weights and the marks thereof being fully and in detail set forth on the annexed bill marked Exhibit A, annexed to and made part hereof as if fully set forth herein; that on said 12th day of March, 1912, petitioner delivered to said E. Martin and Company the aforesaid bill of lading

2 and received from E. Martin and Company their check for the aforesaid amount on the German-American National Bank, which check was worthless and payment of which was refused by said Bank.

Petitioner further shows that on the 12th day of March, 1912, petitioner was the owner of seventy-five bales of cotton marked S O N X and of fifty-nine bales of cotton marked E L S O and of a bill of lading for said seventy-five bales of cotton, dated Rosedale, Mississippi, March 8, 1912, issued by the Yazoo and Mississippi Valley Railroad Company to Humphrey and Company or other, notify Lehman, Stern and Company, New Orleans, and for the said fifty-nine bales of cotton issued on the 8th day of March, 1912, by the Yazoo and Mississippi Valley Railroad Company at Rosedale Miss. to Humphrey and Company or order, notify Lehman, Stern and Company, New Orleans, said bills of lading being duly endorsed.

Petitioner shows that in the City of New Orleans, La., on the

12th day of March, 1912, your petitioner sold for cash the aforesaid cotton to said E. Martin and Company for the sum of Seven thousand, two Dollars and fifty-eight cents ($7,002.58) the price at which said cotton was sold and the weights and marks thereof being fully and in detail set forth on the annexed bill marked Exhibit B annexed to and made part hereof as if fully set forth herein; that on said 12th day of March, 1912, petitioner delivered to said E. Martin and Company the aforesaid bills of lading and received from E. Martin and Company their check for the aforesaid amount on the German-American National Bank, which check was worthless and payment of which was refused by said Bank.

Petitioner shows further that on the 12th day of March, 1912, your petitioner was the owner of sixty-three bales of cotton marked L A R K and of the bill of lading for said sixty-three bales of cotton issued at Memphis, Texas, on the 29th February, 1912, by
3 the Fort*h* Worth and Denver City Railroad Company to T. T. Harrison or order, notify Lehman, Stern and Company, said bill of lading being duly endorsed in blank; and petitioner was also the owner of seventy-two bales of cotton marked D U N and of the bill of lading, issued therefor by the Fort*h* Worth and Denver City Railroad Company, at Memphis Texas on the 28th day of February, 1912, to T. T. Harrison or order, notify, Lehman, Stern and Company, said bill of lading being duly endorsed Petitioner shows that in the City of New Orleans, La., on the said 12th day of March, 1912, petitioner sold for cash to E. Martin and Company the aforesaid one hundred and thirty five (135) bales of cotton for the sum of five thousand, four hundred, fifty-two dollars and thirty-one cents ($5,452.31), the price at which said cotton was sold, the weights and the marks thereof being fully and in detail set forth on the annexed bill marked Exhibit C annexed to and made part hereof as if fully set forth herein; that on said 12th day of March, 1912, petitioner delivered to said E. Martin and Company the aforesaid bills of lading and received from E. Martin and Company their check for the aforesaid amount on the German-American National Bank, which check was worthless and payment of which was refused by said Bank.

Petitioner further shows that all of the aforesaid cotton is in the possession of the railroad companies issuing the said bills of lading or their connections.

Petitioner further shows that upon the receipt by the defendant E. Martin and Company of the aforesaid bills of lading from petitioner in the manner and under the circumstances aforesaid, said E. Martin and Company, in fraud of petitioner's rights, delivered said bills of lading to and into the possession of S. Gumbel and Company, Limited, a corporation of the City of New Orleans, which acquired no rights thereon or thereunder.

4 Petitioner shows that the aforesaid cotton is an agricultural product of the United States and that your petitioner is entitled by law to a special lien and privilege thereon to secure the payment of the purchase money, and that your petitioner, the vendor thereof, is entitled to seize the same in whatsoever hands

or place it may be found; and petitioner's claim for the aforesaid purchase money has a preference over all others.

Petitioner fears that the aforesaid cotton and the bills of lading issued therefor as aforesaid may be concealed, parted with and disposed of during the pendency of this suit, or sent out of the jurisdiction of this Honorable Court, and that petitioner may be thereby deprived of its lien and privilege and recourse thereon.

Petitioner further shows that said E. Martin and Company, have mortgaged, assigned and disposed of and are about to mortgage, assign and dispose of their property, rights and credits or some part thereof with intent to defraud petitioner and their other creditors.

Petitioner further shows that said E. Martin and Company have failed and refused to pay the sum due by them as aforesaid, notwithstanding amicable demand, and said entire sum is still due and owing to petitioner by said E. Martin and Company and the individual members thereof.

Petitioner believes that the Hibernia Bank and Trust Company, the Whitney-Central National Bank, the German-American National Bank, the Metropolitan Bank, the Canal-Louisiana Bank and Trust Company and S. Gumbel and Company, Limited, all corporations of this City, are indebted to the said E. Martin and Company and the individual members thereof, namely: Eugene Martin, Sr., Eugene Martin, Jr., Gayarre Martin and Francis Martin, or have property in their possession or under their control belonging to said defendants, and petitioner desires that the aforesaid corporations
5 be made garnishees herein and be required to answer under oath and in writing the interrogatories annexed to this petition.

Wherefore, the annexed affidavit considered, petitioner prays that writs of sequestration and attachment issue in favor of petitioner, according to law, upon petitioner furnishing bonds and security required by law, directing the Civil Sheriff of the Parish of Orleans to seize and attach and sequester the above described cotton and the bills of lading issued therefor in whatsoever hands or place they may be found; and that he also seize and attach according to law property of the said E. Martin and Company and the individual members thereof within the jurisdiction of this Court sufficient to satisfy petitioner's said claim, and to hold same subject to the further order of this Court and the judgment to be hereinafter rendered herein; that the commercial firm of E. Martin and Company, composed of Eugene Martin, Sr., Eugene Martin, Jr., Gayarre Martin and Francis Martin, and the individual members thereof be cited to appear and answer this petition; that the said Hibernia Bank and Trust Company, Whitney-Central National Bank, German-American National Bank, Metropolitan Bank, Canal-Louisiana Bank and Trust Company and S. Gumble and Company, Limited, be made garnishees herein and ordered to answer the annexed interrogatories according to law; and for judgment in due course in favor of petitioner, Lehman, Stern and Company, Limited, and

against said commercial firm of E. Martin and Company and the individual members thereof, Eugene Martin, Sr., Eugene Martin, Jr., Gayarre Martin and Francis Martin, in solido, for the sum of Nineteen thousand, two hundred, thirty-eight dollars and fifty-three cents ($19,238.53) with interest at the rate of five per centum (5%) per annum from judicial demand until paid and all costs of this suit; maintaining the writs of sequestration and attachment issued herein, and recognizing and maintaining petitioner's
6 privilege and preference over all others on the property sequestered and on the proceeds thereof; and for general relief.

(Signed) DENEGRE & BLAIR,
Att'ys for Petitioners.

Affidavit.

Personally came and appeared before me, the undersigned authority, Maurice Stern, who upon being by me first duly sworn did depose and say that said Lehman, Stern and Company, Limited, is the plaintiff in the above suit; that he is the President thereof and makes this affidavit on its behalf; that he has read the said petition and all of the facts and allegations therein contained are true and correct.

(Signed) MAURICE STERN.

Sworn to and subscribed before me at New Orleans, Louisiana, on this, the 13th day of March, A. D. 1912.

(Signed) HENRY H. CHAFFE,
Notary Public.

Order.

The foregoing petition and affidavit considered, Let a writ of attachment issue herein as prayed for, upon plaintiff giving bond with good and solvent surety and conditioned as the law directs.

Let a writ of sequestration issue herein as prayed for, on plaintiff giving bond with good and solvent security according to law in the sum of Ten thousand dollars.

N. O., March 13, 1912.

(Signed) PORTER PARKER, *Judge.*

(Endorsed:) No. 99923. Civil District Court, Division C—Docket 4—Lehman, Stern & Company vs. E. Martin et als. Filed March 13th, 1912. (Signed) James McCormick, Dep. Clerk.

7 *Citation on the New Orleans, Texas & Mexico Railroad Company and Sheriff's Return Thereon.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

No. 99923.

LEHMAN, STERN & COMPANY
versus.
E. MARTIN & COMPANY.

New Orleans, Texas & Mexico Railroad Co., through its proper officer, New Orleans, Garnishee:

You are hereby cited, to declare on oath, what property belonging to the Defendant in this case you have in your possession, or in what sum you are indebted to said Defendant, and also, to answer in writing under oath, the interrogatories annexed to the Petition of which a copy accompanies this citation, and deliver your answer to the same, in the office of the Clerk of the Civil District Court for the Parish of Orleans, within ten days after the service hereof, otherwise judgment will be entered against you for the amount claimed by the plaintiff with interest and costs.

Witness, the Honorable E. K. Skinner Judge of the said Court, this 14th day of March 1912, in the year of our Lord, *190.*

(Signed) JOS. DOYLE. [SEAL.]
Deputy Clerk.

Sheriff's Return.

Received Thursday Mar. 14, 1912, and on the 15th day of March 1912 at 10.04 *100* A. M. I served a copy of the within Citation and accompanying Petition and Interrogatories on New Orleans Texas and Mexico Railroad Company Garnishee herein by leaving the same at their Office corner of St. Charles and Common street in the hands of Mr. I. T. Preston their Secretary. The President and other Superior Officers being absent from the state at the time of said service. All of which facts I ascertained by interrogatories — said Mr. I. T. Preston their Secretary.

8 Returned same day.
Sheriff's fees $1.50.

(Signed) ERNEST LUCAS,
Deputy Sheriff.

Endorsement: No. 99923. Civil District Court for the Parish of Orleans. Lehman, Stern & Company vs. E. Martin & Company. Denegre & Blair Attorneys. Copy of Petition. Interrogatories and Citation inside, to be served on Garnishee. Filed M'c'h 21/12. (Signed) Jos. Doyle, Dep'ty Cl'k.

9 *Citation to S. Gumbel & Co., Ltd., and Sheriff's Return Thereon.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans in the City of New Orleans.

No. 99923.

LEHMAN, STERN & CO.
versus
E. MARTIN & CO. et als.

S. Gumbel & Co. Ltd. through its proper officer, New Orleans, Garnishee:

You are hereby cited, to declare on oath, what property belonging to the Defendant in this case you have in your possession, or in what sum you are indebted to said Defendant, and also, to answer in writing under oath, the interrogatories annexed to the Petition of which a copy accompanies this citation, and deliver your answer to the same, in the office of the Clerk of the Civil District Court for the Parish of Orleans, within ten days after the service hereof, otherwise judgment will be entered against you for the amount claimed by the plaintiff with interest and costs.

Witness, the Honorable E. K. Skinner, Judge of the said Court, this 14th day of March 1912, in the year of our Lord, 190-.

(Signed) JAS. DOYLE, [SEAL.]
Deputy Clerk.

Sheriff's Return.

Received Thursday Mar. 14, 1912 and on the 15th day of March 1912 at 11.45 A. M. I served a copy of the within Citation and accompanying Petition and Interrogatories on S. Gumbel and Company Limited Garnishee herein by personal service on Henry E. Gumbel its President at its Office No. 838 Gravier street in this City.

Returned same day.
Sheriff's fees $1.50.

(Signed) EDW. J. FLEMING,
Deputy Sheriff.

10 Endorsement: No. 99923. Civil District Court for the Parish of Orleans. Lehman, Stern & Co. vs. E. Martin & Co. et als. Denegre & Blair, Attorney-. Copy of Petition. Interrogatories and Citation inside, to be served on Garnishee. Filed M'c'h 21/'12. (Signed) Jos. Doyle, D'p'y Cl'k.

11 *Writ of Attachment.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

The State of Louisiana to the Sheriff of the Parish of Orleans, Greeting:

Whereas, due proof has been made before the Civil District Court for the Parish of Orleans, by Lehman, Stern and Company Limited that E. Martin and Company, and the individual members thereof is justly indebted to Lehman Stern and Company, Limited in the sum of Nineteen thousand two hundred, thirty-eight Dollars and fifty-three cents ($19,238.53) with 5% interest from Judicial demand and that the said E. Martin and Company, have mortgaged, assigned and disposed of and are about to mortgage, assign and dispose of their property rights, and credits or some part thereof with intent to defraud petition- and their other creditors; petitioner fears that the aforesaid cotton and the bills of lading therefor may be concealed parted with and disposed of during the pendency of this suit, or sent out of the jurisdiction of this Court, and that petitioner may be thereby deprived of its lien and privilege.

Now, therefore, you are commanded, in the name of the State of Louisiana, and of the Civil District Court for the Parish of Orleans, to seize and attach according to law, and to take into your possession the goods and chattels, lands and tenements, rights and moneys, effects and credits of the said E. Martin and Company, composed — Eugene Martin, Sr. Eugene Martin, Jr., Gayarre Martin and Francis Martin if any you find in said parish, to the amount of what will suffice to discharge said debt and costs of suit, and that you

12 give notice of this proceeding, according to law, and make return of this writ and endorse thereon the manner in which you have executed it, before our Court according to law.

Clerk's office, Thirteenth day of March, 1912.

(Signed) J. McCORMICK,

[SEAL.] *Deputy Clerk.*

Endorsed on back: No. 99923. Civil District Court. Lehman, Stern & Co. versus E. Martin & Co. & al. Writ of Attachment. Resident. Received Wednesday Mar. 13, 1912 and on —.

13 *Notice of Seizure to S. Gumbel & Co., Ltd., and Sheriff's Return Thereon.*

STATE OF LOUISIANA,
Civil Sheriff's Office, Parish of Orleans:

In the Civil District Court for the Parish of Orleans.

No. 99923.

LEHMAN, STERN & CO., LIMITED,
versus.
E. MARTIN & Co. et als.

NEW ORLEANS, *March 13th*, 1912.

To S. Gumbel & Co., Ltd., through Henry E. Gumbel its President:

Please to take notice, that by virtue of a writ of Attachment issued in the above mentioned suit, I seize in your hands, all the Goods, Chattels, Lands, Tenements, Rights and Credits, Moneys, Effects, Bills of Exchange, Promissory Notes or property of any kind which you may now or hereafter have in your possession or under your control belonging to defendants the commercial firm of E. Martin & Co., composed of Eugene Martin, Sr., Eugene Martin, Jr., Gayarre Martin & Francis Martin which you will hand over to me.

(Signed) GEO. J. MANN,
Deputy Sheriff.

Sheriff's Return.

And on the 14th day of March 1912 at 9:30 A. M., I served a copy of the within Notice of Seizure on S. Gumbel and Company, Limited, herein named through Henry E. Gumbel its President in person.

(Signed) J. J. OLIVER,
Deputy Sheriff.

14 *Notice of Seizure to New Orleans, Texas and Mexico Railroad Company, and Sheriff's Return Thereon.*

STATE OF LOUISIANA,
Civil Sheriff's Office, Parish of Orleans:

In the Civil District Court for the Parish of Orleans.

No. 99923.

LEHMAN, STERN & CO., LTD.
versus
E. MARTIN & Co., &c.

NEW ORLEANS, *March* 14, 1912.

To the New Orleans, Texas and Mexico Railroad Company:

Please to take notice, That by virtue of a writ of Attachment issued in the above mentioned suit, I seize in your hands, all the Goods,

Chattels, Lands, Tenements, Rights and Credits, Moneys, Effects, Bills of Exchange, Promissory Notes or property of any kind which you may now or hereafter have in your possession or under your control belonging to defendants the Commercial firm of E. Martin and Company and its individual members, Eugene Martin, Sr., Eugene Martin, Jr., Gayarre Martin and Francis Martin which you will hand over to me.

(Signed) A. E. AUBURTIN,
Deputy Sheriff.

Sheriff's Return.

Received Thursday Mar. 14, 1912, and on the 14th day of March 1912 at 4:15 P. M., I served a copy of the within Notice of Seizure on The New Orleans Texas and Mexico Railroad Company herein named by leaving same at their office No. 201 St. Charles Street in the hands of Mr. E. J. Hotard, Clerk and Stenographer, a male person apparently over the age of 14 years. The President and other Superior Officers being absent from the office at time of said service.

All of which facts I ascertained by interrogating said Mr. E. J. Hotard, Clerk and Stenographer.

(Signed) J. P. CAUCHS,
Deputy Sheriff.

Notice of Seizure to E. Martin & Company et al. and Sheriff's Return Thereon.

STATE OF LOUISIANA,
Civil Sheriff's Office, Parish of Orleans:

In the Civil District Court for the Parish of Orleans.

No. 99923.

LEHMAN, STERN AND COMPANY
versus
E. MARTIN AND COMPANY.

NEW ORLEANS, *March* 18, 1912.

To E. Martin & Company, E. Martin, Sr., Eugene Martin, Jr., Gayarre Martin and Francis Martin:

Please to take notice, That by virtue of a writ of Attachment issued in the above mentioned suit, I have seized in the hands of Whitney-Central National Bank, German-American National Bank, Metropolitan Bank, Canal-Louisiana Bank and Trust Company, New Orleans, Texas and Mexico Rail Road Company, Yazoo & Mississippi Valley Rail Road Company, S. Gumbel and Company, Limited and Hibernia Bank and Trust Company, made garnishee herein, all the Goods, Chattels, Lands, Tenements, Rights, and Credits, Moneys, Effects, Bills of Exchange, Promissory Notes or property of any kind now in the possession of or which may hereafter come into the possession of said garnishee.

The writ in the above suit issued for the sum of $19,238.53/100 with interest and costs.

(Signed) BEN P. TILLER,
Deputy Sheriff.

17 *Sheriff's Return.*

And on the 19th day of March 1912, I served a copy of the within Notice of Seizure on E. Martin & Co., defendant herein by personal service on Eugene Martin, Sr., a member of said firm.

(Signed) E. E. CHAILLOT,
Deputy Sheriff.

Sheriff's fees 50¢.

And on the 19th day of March 1912 I served a copy of the within Notice of Seizure on Eugene Martin, Sr., defendant herein in person.

(Signed) E. E. CHAILLOT,
Deputy Sheriff.

Sheriff's fees 50¢.

And on the 19th day of March, 1912, I served a copy of the within Notice of Seizure on Eugene Martin, Jr., defendant herein in person.

(Signed) E. E. CHAILLOT,
Deputy Sheriff.

Sheriff's fees 50¢.

And on the 19th day of March, 1912, I served a copy of the within Notice of Seizure on Francis Martin defendant herein in person.

(Signed) E. E. CHAILLOT,
Deputy Sheriff.

And on the 19th day of March, 1912, I served a copy of the within Notice of Seizure on Gayarre Martin defendant herein in person.

(Signed) E. E. CHAILLOT,
Deputy Sheriff.

Sheriff's fees 50¢.

18 *Supplemental and Amended Petition of Lehman, Stern & Company, Limited, Order, and Interrogatories.*

Civil District Court, Parish of Orleans, Louisiana, Division —.

No. 99923.

LEHMAN, STERN AND COMPANY, LIMITED,
versus
E. MARTIN AND COMPANY.

To the Honorable the Judges of the Civil District Court for the Parish of Orleans, Louisiana:

The supplemental and amended petition of Lehman, Stern and Company, Limited, plaintiff in this suit, filed with leave of Court first obtained,

With respect represents:

Petitioner reiterates all the allegations of its original petition.

Petitioner avers that your petitioner has obtained from this Honorable Court writs of attachment and sequestration herein ordering and directing the Civil Sheriff of the Parish of Orleans to seize and attach and sequester said cotton described in said petition and the bills of lading issued therefor, in whatsoever hands or place they may be found and that he also seize and attach according to law property of the commercial firm of E. Martin and Company, composed of Eugene Martin, Sr., Eugene Martin, Jr., Gayarre Martin and Francis Martin, and the said individual members thereof within the jurisdiction of this Court sufficient to satisfy petitioner's said claim and to hold the same subject to the further order of this Court and the judgment to be hereinafter rendered.

Petitioner further shows that, as averred in its original petition, petitioner believes that the Hibernia Bank and Trust Company, the Whitney-Central National Bank, the German-American National Bank, the Metropolitan Bank, the Canal-Louisiana Bank and Trust Company and S. Gumbel and Company, Limited, all corporations of this City, and Yazoo & Mississippi Valley Railroad Company and New Orleans, Texas and Mexico Railroad Company are in-
19 debted to the said E. Martin and Company and the individual members thereof, namely: Eugene Martin, Sr., Eugene Martin, Jr., Gayarre Martin and Francis Martin, or have property in their possession or under their control belonging to said defendants, and petitioner desires that the aforesaid corporations be made garnishees herein and required to answer under oath and in writing the interrogatories annexed to this supplemental and amended petition.

Wherefore petitioner prays that this supplemental and amended petition may be filed, and that, the original petition and the affidavit annexed thereto being considered, the Hibernia Bank and Trust Company, the Whitney-Central National Bank, the German-American National Bank, the Metropolitan Bank, the Canal-Louisiana Bank and Trust Company and S. Gumbel and Company, Limited, all corporations domiciled in the City of New Orleans, Louisiana, and Yazoo and Mississippi Valley Railroad Company and New Orleans, Texas and Mexico Railroad Company be made garnishees herein and may be ordered to answer under oath the accompanying interrogatories, and after all due and legal proceedings, condemned to pay the amount of said writ and costs.

Petitioner further prays as prayed in its original petition herein and for costs and general relief.

(Signed) DENEGRE & BLAIR,
Attorneys for Petitioner.

Order.

Let this supplemental and amended petition be filed and let the Hibernia Bank and Trust Company, the Whitney-Central National Bank, the German-American National Bank, the Metropolitan Bank, the Canal-Louisiana Bank and Trust Company and S. Gumbel and

Company, Limited, Yazoo and Mississippi Valley Railroad Company and New Orleans, Texas and Mexico Railroad Company, be made garnishees herein and ordered to answer the accompanying interrogatories under oath, categorically and in writing
20 within ten days from service, and as the law directs and herein prayed for.

New Orleans, March 14, 1912.

(Signed) E. K. SKINNER, *Judge.*
(Signed) FRED D. KING, *Judge.*

Interrogatories.

To Be Answered Categorically under Oath, in Writing, Ten Days from Service.

1st. Had you in your hands, or under your control, directly or indirectly, at the time of service of notice of seizure or of these interrogatories, or at any time since, any money, rights, credits, or other property whatsoever, belonging or due to the said defendant in writs or in which it or they have or had any interest for the whole or for a part; and if yea, what is the nature, description and amount thereof; and is the same sufficient to pay or to satisfy the full amount of said writs or if less, to what amount?—you being asked and required to make a full disclosure in relation to the same.

2d Interrogatory. Were you not, at the time of service upon you of notice of seizure or of these interrogatories, or since, directly or indirectly indebted or obligated unto the said defendants in writs for anything or for any sum whatever, whether for yourself alone or together with others, in consequence of any sale or exchange or transaction of any kind whatever, whether the same be due or to become due, and whether the interests of said defendants in writs be direct or indirect, or be for the whole or a part only or whether it be by bill, note or otherwise; and if yea, what is the nature, description and amount thereof, and is the same sufficient to pay or satisfy the full amount of said writs and costs, or if less, what amount?—you being asked and required to make a full and detailed disclosure in relation to the same.

3d Interrogatory. Have you, at any time since the service of notice of seizure in your hands herein made, directly or indirectly, unto or with the said defendant in writs any payment or innovation or compromise, or arrangement or given it or them any note or
21 written obligation, or received from it or them directly or indirectly any receipt or acquittance? and if yea, state the nature, description and amount thereof, and the time, place and circumstances of the same.

4th Interrogatory. Have you at any time since the service of notice of seizure or of these interrogatories in your hands herein and in your possession or under your control one hundred and twenty-three (123) bales of cotton marked G O O D, shipped on or about March 9, 1912, by D. J. Schlenker and Company, by the Yazoo and Mississippi Valley Railroad Company at Vicksburg, Mississippi; and seventy-five (75) bales of cotton marked S O N X; and

fifty-nine (59) bales of cotton marked E L S O shipped by said Railroad Company by Humphrey and Company at Rosedale, Mississippi, on or about March 8, 1912; and sixty-three (63) bales of cotton marked L A R K shipped on or about February 29, 1912, by T. T. Harrison, at Memphis, Texas, by the Fort Worth and Denver City Railroad Company; and seventy-two (72) bales of cotton marked D U N shipped on or about February 28, 1912, by T. T. Harrison, at Memphis, Texas, by the Fort Worth and Denver City Railroad Company, and the bills of lading representing all said cotton, or have you had at any time since the service of notice of seizure in your hands had in your possession or under your control any portion of said cotton or any bill of lading representing said cotton or any portion of said cotton? If you answer the above interrogatory or any portion thereof in the affirmative, state the nature, description and amount and all details of the bill of lading and of the cotton so held by you in your possession or under your control, together with all details as to the person, firm or corporation from whom you acquired it and when and how and for what consideration. State whether you have parted with said bill of lading or said cotton and, if so, to whom and when and how and for what consideration.

22 *Citation of New Orleans, Texas & Mexico Railroad Company, and Sheriff's Return.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

No. 99923.

LEHMAN, STERN & CO.
versus
E. MARTIN & CO. et als.

New Orleans, Texas & Mexico Railroad Company, through its proper officer, New Orleans, Garnishee:

You are hereby cited, to declare on oath, what property belonging to the Defendant in this case you have in your possession, or in what sum you are indebted to said Defendant, and also, to answer in writing under oath, the interrogatories annexed to the Supplemental Petition of which a copy together with a copy of the original petition accompanies this citation, and deliver your answer to the same, in the office of the Clerk of the Civil District Court for the Parish of Orleans, within ten days after the service hereof, otherwise judgment will be entered against you for the amount claimed by the plaintiff with interest and costs.

Witness, the Honorable E. K. Skinner, Judge of the said Court, the 16th day of March, 1912, in the year of our Lord.

(Signed) JOS. DOYLE,
Deputy Clerk. [SEAL.]

Sheriff's Return.

Received Saturday, March 16, 1912, and on the 16th day of March 1912 at 12:25 A. M. I served a copy of the within Citation and supplemental Petition and original Petition and Interrogatories on New Orleans Texas and Mexico Railroad Company Garnishee herein by leaving the same at their office corner St. Charles and Common streets in the hands of I. T. Preston their Secretary. The President and other superior officers being absent from the City at time of said service. All of which facts I ascertained by interrogating said I. T. Preston their Secretary.

Returned same day.

Sheriff fees $1.50.

(Signed) ERNEST A. LUCAS,
Deputy Sheriff.

23 Endorsed: No. 99923. Civil District Court for the Parish of Orleans. Lehman, Stern & Co. vs. E. Martin & Co. et als. Denegre & Blair, Attorney-. Copy of Petition. Interrogatories and Citation inside, to be served on Garnishee. Filed Mch. 21/12. (Signed) Jos. Doyle, D'p'y Clk.

24 *Citation on S. Gumbel & Co., Limited, and Sheriff's Return.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

No. 99923.

LEHMAN, STERN & Co.
versus
E. MARTIN & Co. et al.

S. Gumbel & Co., Limited, through its proper officer, New Orleans, Garnishee:

You are hereby cited, to declare on oath, what property belonging to the Defendant in this case you have in your possession, or in what sum you are indebted to said Defendant, and also, to answer in writing under oath, the interrogatories annexed to the supplemental Petition of which a copy accompanies this citation, together with a copy of the original petition and deliver your answer to the same, in the office of the Clerk of the Civil District Court for the Parish of Orleans, within ten days after the service hereof, otherwise judgment will be entered against you for the amount claimed by the plaintiff with interest and costs.

Witness, the Honorable E. K. Skinner, Judge of the said Court, the 16th. day of March 1912, in the year of our Lord, 190—.

(Signed) [SEAL.] JOS. DOYLE,
Deputy Clerk.

Sheriff's Return.

Received Saturday, Mar. 16, 1912, and on the 16th day of March 1912 at 12:25 A. M. I served a copy of the within Citation and supplemental Petition and original Petition and Interrogatories on S. Gumbel and Company Limited Garnishee herein by personal service on Henry S. Gumbel its President.

Returned same day.

Sheriff fees $1.50.

(Signed) ERNEST A. LUCAS,
Deputy Sheriff.

25 Endorsed: No. 99923. Civil District Court for the Parish of Orleans. Lehman, Stern & Co. vs. E. Martin & Co. et als. Denegre & Blair, Attorney-. Copy of Petition. Interrogatories and Citation inside, to be served on Garnishee. Filed Mch. 21/12. (Signed) Jos. Doyle, D'p'y Clk.

26 *Notice of Seizure to New Orleans, Texas & Mexico Railroad Company and Sheriff's Return Thereon.*

NEW ORLEANS, *March 16th*, 1912.

STATE OF LOUISIANA,
Civil Sheriff's Office, Parish of Orleans:

In the Civil District Court for the Parish of Orleans.

No. 99923.

LEHMAN, STERN & CO., LIMITED,
versus
E. MARTIN & CO. et als.

To New Orleans, Texas and Mexico Railroad Company, Through Its Proper Officer, Garnishee, New Orleans:

Please to Take Notice, That by virtue of writs of Sequestration & Attachment issued in the above mentioned suit, I seize in your hands, all the Goods, Chattels, Lands, Tenements, Rights and Credits, Moneys, Effects, Bills of Exchange, Promissory Notes or property of any kind which you may now or hereafter have in your possession or under your control belonging to defendants, E. Martin & Co., E. Martin, Sr., Eugene Martin Jr., Gayarre Martin and Francis Martin, which you will hand over to me.

(Signed) BEN P. TILLER,
Deputy Sheriff.

Sheriff's Return.

And on the 16th day of March 1912, at 12:25 A. M., I served a copy of the within Notice of Seizure on New Orleans, Texas and

Mexico Railroad Company, Garnishee herein, by leaving the same at their office corner St. Charles and Common Streets in the hands of I. T. Preston their Secretary, The President and other superior officers being absent from the City at time of said service. All of which facts I ascertained by interrogating said I. T. Preston their Secretary.

(Signed) ERNEST A. LUCAS,
Deputy Sheriff.

27 *Notice of Seizure to S. Gumble & Company, Limited, and Sheriff's Return Thereon.*

NEW ORLEANS, *March 16th*, 1912.

STATE OF LOUISIANA,
Civil Sheriff's Office, Parish of Orleans.

In the Civil District Court for the Parish of Orleans.

No. 99923.

LEHMAN, STERN & CO., LTD.,
versus
E. MARTIN & CO. et als.

To S. Gumbel & Co., Ltd., Through Its Proper Officer, N. O., La., Garnishee:

Please to Take Notice, That by virtue of a writ of Sequestration & Attachment issued in the above mentioned suit, I seize in your hands all the Goods, Chattels, Lands, Tenements, Rights and Credits, Moneys, Effects, Bills of Exchange, Promissory Notes or property of any kind which you may now or hereafter have in your possession or under your control belonging to defendant E. Martin & Company, E. Martin Sr., Eugene Martin Jr., Gayarre Martin & Francis Martin, which you will hand over to me.

(Signed) BEN P. TILLER,
Deputy Sheriff.

Sheriff's Return.

And on the 16th day of March, 1912, at 12:28 A. M., I served a copy of the within Notice of Seizure on S. Gumbel and Company, Limited Garnishee herein by personal service on Henry E. Gumbel its President.

(Signed) ERNEST A. LUCAS,
Deputy Sheriff.

28 *Notice of Seizure to E. Martin & Company et al. and Sheriff's Return Thereon.*

NEW ORLEANS, *March 18th*, 1912.

STATE OF LOUISIANA,
Civil Sheriff's Office, Parish of Orleans:

In the Civil District Court for the Parish of Orleans.

No. 99923.

LEHMAN, STERN & CO., LTD.,
versus
E. MARTIN & CO. et als.

To E. Martin & Company, E. Martin, Sr., Eugene Martin, Jr., Gayarre Martin, & Francis Martin:

Please to Take Notice, That by virtue of a writ of Suquestration & Attachment issued in the above mentioned suit, I have seized in the hands of S. Gumbel & Co., Ltd., New Orleans Texas and Mexico Rail Road Company and Yazoo and Mississippi Valley Rail Road Co., made garnishee herein all the Goods, Chattels, Lands, Tenements, Rights, and Credits, Moneys, Effects, Bills of Exchange, Promissory Notes or property of any kind now in the possession of or which may hereafter come into the possession of said garnishee.

The writ in the above suit issued for the sum of $19,238 53/100 with interest and costs.

(Signed) BEN P. TILLER,
Deputy Sheriff.

Sheriff's Return.

And on the 19th day of March, 1912, I served a copy of the within Notice of Seizure on E. Martin & Co., defendant
29 herein by personal service on Eugene Martin Sr., a member of said firm.

(Signed) E. E. CHAILLOT,
Deputy Sheriff.

Sheriff's fees 50c.

And on the 19th day of March, 1912, I served a copy of the within Notice of Seizure on Eugene Martin, Sr., defendant herein in person.

(Signed) E. E. CHAILLOT,
Deputy Sheriff.

Sheriff's fees 50c.

And on the 19th day of March 1912 I served a copy of the within — of Seizure on Eugene Martin, Jr., defendant herein in person.

(Signed) E. E. CHAILLOT,
Deputy Sheriff.

Sheriff's fees 50c.

And on the 19th day of March, 1912, I served a copy of the within Notice of Seizure on Francis Martin, defendant herein in person.

(Signed) E. E. CHAILLOT,
Deputy Sheriff.

Sheriff's fees 50c.

And on the 19th day of March, 1912, I served a copy of the within Notice of Seizure on Gayarre Martin.

(Signed) E. E. CHAILLOT,
Deputy Sheriff.

Sheriff's fees 50c.

30 *Exception of Hibernia Bank & Trust Co., Garnishee.*

Civil District Court, Division C.

No. 99923.

LEHMAN, STERN & CO., LTD.,
vs.
E. MARTIN & Co. et als.

Now into this Honorable Court, through undersigned counsel, comes the Hibernia Bank & Trust Company, made garnishee and party defendant hereto, and excepts to further proceedings herein upon the ground that this honorable court is without jurisdiction ratione materiæ.

Wherefore it prays that this exception be sustained, and that it be hence dismissed with its costs, and for general relief.

(Signed) McCLOSKEY & BENEDICT,
Attorneys.

(Endorsed:) No. 99,923—Div. "C".—Civil District Court.—Lehman, Stern & Co. vs. E. Martin & Co. et al.—Exception of Hibernia Bank & Trust Co., garnishee.—Filed M'ch 23/12,—(Signed) Jos. Doyle, Deputy Clerk.

31 *Exception of S. Gumbel & Company.*

Civil District Court, Parish of Orleans, Division "C."

No. 99923.

LEHMAN, STERN & COMPANY, LTD.,
vs.
E. MARTIN & COMPANY et als.

Now comes S. Gumble & Company, Ltd., made Garnishee herein, and excepts to the interrogatories propounded to it and to the juris-

diction of this Honorable Court, upon the ground that E. Martin & Company and the individual members thereof have been duly adjudicated bankrupts by proceedings instituted in the United States District Court for the Eastern District of Louisiana, on the 19th day of March, 1912.

Wherefore, Respondent prays to be hence dismissed with costs, and for all general and equitable relief.

(Signed) HALL, MONROE & LEMANN,
Attorneys for Respondent.

(Endorsed:) No. 99,923—Civil District Court,—Div. "C"—Lehman, Stern & Co. Ltd. vs. E. Martin & Co. et al.,—Exception,—Filed M'ch 25/12,—(Signed) Jos. Doyle, Dep. Clerk.

32 *Answers New Orleans, Texas & Mexico Railroad Company to Interrogatories.*

Civil District Court, Division —.

No. 99923.

LEHMAN, STERN & COMPANY
versus
E. MARTIN & COMPANY.

Now into Court comes the New Orleans, Texas & Mexico Railroad Company, through its Secretary, Ivy T. Preston, and for answer to the interrogatories herein propounded says as follows:

To the 1st interrogatory: At the time of the service upon the said N. O., T. & M. R. R. Co., of notice of seizure, and at the time of the service of the interrogatories, no property of any sort belonging to the defendant herein, E. Martin & Company was in its hands, or under its control, directly or indirectly, except as and unless it may so appear from the answer to interrogatory 4, herein propounded.

To the 2nd interrogatory: Respondent answers "No."

To the 3rd interrogatory: Respondent answers "No."

To the 4th interrogatory: The N. O. T. & M. R. R. Co. has in its possession the following described cotton:

72 bales Marked D U M.

11 bales marked L A R K.

Further answering respondent says that at time of the service of the notice of seizure and of the service of these interrogatories, no part of the above cotton was in the hands of your respondent; that

33 the said cotton arrived in the City of New Orleans on March 17th, 1912, and at the time of the notice of said seizure, the said cotton was in transit, and not within the jurisdiction of the Court.

Further answering respondent says that no cotton marked G O O D or S O N X or E L S O is in its possession.

Further answering your respondent says that as to the remaining cotton marked L A R K, to-wit 52 bales, the said cotton has never been delivered to your respondent, either by the shipper of the cotton or by any connecting line, and your respondent has no control, directly or indirectly, over said cotton.

Further answering, your respondent avers that its records do not show that E. Martin & Co. has any claim to or connection with any of the cotton here-in described; that according to the records of your respondent, the bills of lading issued for said cotton were to "Shipper's Order, notify Lehman, Stern & Co."

Further answering your respondent says that it has not in its possession, and never has had in its possession any bill of lading representing the cotton described in the interrogatories herein propounded, or any portion thereof, nor has it had under its control or in its charge any bills of lading of any character whatsoever, and particularly described in the 4th interrogatory, herein propounded.

Further answering your respondent avers that under the laws of the United States and the laws of the State of Louisiana it is required to demand and exact the surrender of the bill of lading issued for the transportation of any commodities committed to it, either
34 by shipper or connecting carrier.

That as to the cotton herein marked as follows: D U M 72 bales, and L A R K 11 bales, they have been issued from the initial point as part of an interstate movement bills of lading, and said bills of lading respondent is advised are in the hands of S. Gumbel & Co. Ltd.

Further answering your respondent says that the said S. Gumbel & Co. Ltd., has made demand upon your respondent for the 72 bales of cotton marked D U M and the 11 bales marked L A R K, and has presented the bills of lading therefor.

Further answering your respondent avers that in the proceedings No. 1641 of the United States District Court for the Eastern District of Louisiana, E. Martin & Co. and the individual members of said firm, have been adjudicated bankrupts, and W. B. Thompson has been appointed and has been qualified as temporary Receiver; that the said W. B. Thompson has notified your respondent that as the representative of E. Martin & Co., and the creditors of said firm, he claims the right and ownership of said cotton, and has notified your respondent not to surrender same.

Further answering your respondent avers that there is due on said cotton to your respondent charges amounting to $44.42 and that said charges will increase from day to day, dependent upon the time the said cotton is held under orders of this Court. In any event, your respondent is entitled to be paid its charges and costs before the delivery of said cotton.

Wherefore, your respondent prays that this Honorable Court will dismiss the seizure against your respondent, and direct that
35 the cotton in question be turned over upon the surrender of the bill of lading, properly endorsed, and that the right of your respondent to demand the payment of such charges as may be

fairly and legally due be recognized, and your respondent be authorized to hold said cotton until such time as said charges are paid.

(Signed) NEW ORLEANS, TEXAS AND MEXICO R. R. CO.,
(Signed) Per IVY T. PRESTON, *Sec't'y.*
(Signed) DUFOUR & DUFOUR,
Att'ys for Respondent.

STATE OF LOUISIANA,
City of New Orleans:

Ivy T. Preston, being duly sworn, deposes and says:

That he is the Secretary of the New Orleans, Texas & Mexico Railroad Company;

That the President and Vice-President of said corporation are absent from the State of Louisiana, and that he is the proper officer to make this affidavit;

That he has read the foregoing answers, and that same are true and correct.

So help him God.

(Signed) IVY T. PRESTON.

Sworn to and subscribed before me this 26th day of March, 1912.

[SEAL.] (Signed) JOHN JANVIER,
Notary Public.

36 (Endorsed:) No. 99923—Civil District Court—Division —. Lehman, Stern & Company versus E. Martin & Company,—Filed M'ch 26/12,—(Signed) Jos. Doyle, Dep. Clerk.

37 *Answers New Orleans, Texas & Mexico Railroad Company to Interrogatories—(Supplemental Answers.)*

Civil District Court, Division —.

No. 99923.

LEHMAN, STERN & COMPANY
versus
E. MARTIN & COMPANY.

Now into Court comes the New Orleans, Texas & Mexico Railroad Company, through Ivy T. Preston, its Secretary, and avers that since the filing of answers by your respondent to the interrogatories herein propounded the fifty-two bales of cotton marked L A R K have been delivered into the possession of your respondent.

Further answering your respondent says that it is advised that the original bills of lading for said cotton are in the hands of S. Gumbel & Company, Ltd., and that said S. Gumbel & Company, Ltd., has presented said bills of lading and demanded said cotton.

Further answering your respondent reiterates and reaffirms each

and every answer made in the responses *to* already filed, and says that under the law it is without warrant or authority to surrender said cotton, except upon the presentation and surrender of the bill of lading properly endorsed, and upon the payment of charges.

Wherefore respondent prays to be hence dismissed.

(Signed) NEW ORLEANS, TEXAS & MEXICO R. R. CO.,
(Signed) Per IVY T. PRESTON, *Sec't'y.*

38 Sworn to and subscribed this 28th day of March, 1912.
[SEAL.] (Signed) JOHN JANVIER,
Notary Public.

(Endorsed:) No. 99923—Civil District Court—Division — — Lehman, Stern & Company versus E. Martin & Company—Answers—Filed M'ch 29/12,—(Signed) Jos. Doyle, Dep. Clerk.

39 *Intervention of W. B. Thompson, Receiver of E. Martin & Company.*

Civil District Court, Parish of Orleans, Division "C."

No. 99923.

LEHMAN, STERN & COMPANY, LTD.,
vs.
E. MARTIN & COMPANY.

Now comes W. B. Thompson and shows to this Honorable Court:—

That he is the duly appointed and qualified Receiver of E. Martin & Company, a firm which was duly adjudicated a bankrupt by the United States District Court for the Eastern District of Louisiana, on the 20th day of March, 1912.

Appearer further shows to this Honorable Court that the proceedings taken in the above numbered and entitled cause, in which E. Martin & Company were made party defendants, was commenced within four months preceding the filing of the petition in bankruptcy by said firm.

That the above numbered and entitled suit does not involve any property within the possession of this Honorable Court, over which this Court can maintain jurisdiction during the bankruptcy of E. Martin & Company.

That the bankruptcy of E. Martin & Company, since the institution of the above numbered and entitled cause, has divested this Court of all jurisdiction in the matter and has put an end to all writs and conservatory measures herein taken.

40 Wherefore, appearer prays that this Honorable Court will dismiss the proceedings herein, relegating the parties to the proper court of bankruptcy to determine their conflicting claims.

Appearer further prays for general and equitable relief, and for such orders as may be necessary in the premises.

(Signed) CAFFERY, QUINTERO, GIDIERE & BRUMBY,
Attorneys for W. B. Thompson, Receiver of E. Martin & Co.

(Endorsed:) No. 99923—Civil District Court,—Division "C"—Lehman, Stern & Company, Ltd. vs. E. Martin & Company,—Intervention of W. B. Thompson, Receiver of E. Martin & Company,—Filed April 12/12,—(Signed) Jos. Doyle, Dep. Clerk.

41 *Petition and Order Authorizing W. B. Thompson, Receiver, to Appear in State Court.*

In the District Court of the United States for the Eastern District of Louisiana.

No. 1641. In Bankruptcy.

In the Matter of E. MARTIN & COMPANY, Bankrupt.

The petition of W. B. Thompson, the duly appointed and qualified Receiver of E. Martin & Company, Bankrupt, respectfully shows:—

That numerous suits have been instituted in the Civil District Court for the Parish of Orleans by various persons claiming to be creditors of the Bankrupt, E. Martin & Company.

That in these suits writs of attachment and garnishment have issued, by which these various persons claiming to be creditors of the bankrupt, E. Martin & Company, are seeking to seize, in satisfaction of their claims, property of the bankrupt, which other persons claim possession of as pledgees of E. Martin & Company, Bankrupt, or as owners.

That it is necessary that your petitioner, as Receiver of the Bankrupt, should appear in these various proceedings in the State Court in order to protect, for the benefit of all creditors, whatever equities may exist in the property of E. Martin & Company which is in the possession of persons claiming rights therein as pledgees. And to that end, your petitioner desires authority to appear in the various suits pending in the State Courts in order to object to the
42 jurisdiction of the State Courts, and in order to have the writs of attachment and seizures set aside and the parties referred to this Court for a settlement of all conflicting claims on the property of the Bankrupt, E. Martin & Company.

Wherefore, your petitioner prays for such authority, and for all general and equitable relief.

(Signed) CAFFERY, QUINTERO, GIDIERE & BRUMBY, *Attorneys for Petitioner.*

Order.

The Court having considered the foregoing petition, it is now ordered that W. B. Thompson, Receiver of E. Martin & Company, Bankrupt, be and he is hereby authorized to appear and take proper action in the various proceedings now pending in the Civil District Court for the Parish of Orleans, in which various persons claiming to be creditors of E. Martin & Company, Bankrupt, are seeking by various writs and garnishments, to satisfy their claims against E. Martin & Company, Bankrupt, upon the property of said bankrupt, of which other persons are claiming possession as pledgees or owners.

April 11/12.

(Signed) RUFUS E. FOSTER, *Judge.*

Clerk's Office.

I hereby certify the above and foregoing to be a true and correct copy of the original, on file and of record in my office.

43 Witness my hand, and the seal of the said Court, at New Orleans, La., this 11th day of April, 1912.

[SEAL.] (Signed) H. J. CARTER, *Clerk.*

(Endorsed:) No. 99923—Div. C.—Civil District Court.—Lehman, Stern & Co. vs. E. Martin & Co. et al.—Filed May 9th, 1912.—(Signed) Joe Garidel, D'y Cl'k.

44 *Copy of Adjudication of Bankruptcy.*

Form No. 12.

Duplicate.

In the District Court of the United States for the Eastern District of Louisiana, New Orleans Division.

No. 1641. In Bankruptcy.

In the Matter of E. MARTIN & COMPANY, Bankrupt.

At New Orleans, Louisiana, in said District, on the Twentieth day of March, A. D. 1912, before the Honorable Rufus E. Foster, Judge of said Court in Bankruptcy, the petition of E. Martin & Company, a commercial partnership composed of Eugene Martin, Senior, Eugene Martin, J. Gaillard Martin, and Francis C. Martin, that the said commercial partnership of E. Martin & Company be adjudged a bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered the said commercial partnership of E. Martin & Company is hereby declared and adjudged bankrupt accordingly.

Witness the Honorable Rufus E. Foster, Judge of said Court, and the seal thereof, at New Orleans, Louisiana, in said District, on the 12th day of April, A. D. 1912.

[Seal of the Court.]

(Signed) H. J. CARTER, *Clerk*,
By —— ——,
Deputy Clerk.

45 (Endorsed:) No. 1641. United States District Court, Eastern District of Louisiana, New Orleans Division. In Bankruptcy. In the Matter of E. Martin & Co., Bankrupts. Copy of Adjudication of Bankruptcy.

46 Proceedings Had in the Supreme Court of the State of Louisiana.

Application for a Writ of Prohibition Filed.

No. 19521.

LEHMAN, STERN & COMPANY, LTD.,
vs.
E. MARTIN & COMPANY et al.

In re S. GUMBLE & COMPANY, LTD., Applying for a Writ of Prohibition.

Filed June 24th, 1912. (Signed) Paul E. Mortimer, Clerk.

Application for a Writ of Prohibition.

Supreme Court, State of Louisiana.

No. —.

LEHMAN, STERN & COMPANY, LTD.,
vs.
E. MARTIN & COMPANY et al.

To the Honorable the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana, on the relation of S. Gumble & Company, Limited, a corporation organized under the laws of the State of Louisiana, and domiciled in the Parish of Orleans, in said State,

With respect represents:

That it was made Garnishee in a suit brought on the 13th day of March, 1912, in the Civil District Court for the Parish of Orleans, under the No. 99,923, by Lehman, Stern & Company, Limited, against E. Martin & Company and others, wherein judgment was

sought by the plaintiffs against the defendants, E. Martin & Company and the members thereof, in the sum of Nineteen Thou-
47 sand, Two Hundred and Thirty-eight and 53/100 Dollars ($19,238.53), with interest and costs.

That within six days thereafter, to-wit: on the 19th day of March, 1912, the defendants in said suit, E. Martin & Company, were adjudicated Bankrupts by judgment of the United States District Court for the Eastern District of Louisiana.

That the effect of said adjudication in bankruptcy, under the provisions of the Federal Bankruptcy Law, was to entirely annul and vacate any attachment proceedings instituted within four months of the date of the adjudication.

National Bankruptcy Act, Sec. 67*f*:

"All levies, judgments, attachments, or other liens obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien, shall be deemed wholly discharged and released from the same."

That accordingly Relator filed exceptions to the garnishment proceedings instituted in the Civil District Court, Division "C", reciting the foregoing facts and setting up that by virtue of the bankruptcy proceedings the State Court was without jurisdiction to maintain the attachment and garnishment. That Relator's said exception was duly argued and submitted to the said Division "C" of the Civil District Court and that thereafter, to-wit: upon the 17th day of June, 1912, judgment was rendered by the Judge of the said Court, overruling Relator's exceptions and upholding the jurisdiction of the Court to entertain the garnishment proceedings.

Relator shows that no property is in the physical possession and custody of the State Court, and that no process has ever been executed except the Service of interrogatories in garnishment upon the attachment, which is specifically annulled by the terms of the Bank-
48 ruptcy Law. Relator represents accordingly that the effect of the decision of the District Court assuming jurisdiction in this case is to strike out of the Bankruptcy Act the provisions therein annulling attachments and to maintain, in the very teeth of that law, an attachment proceeding instituted within six days of bankruptcy against an insolvent defendant.

Relator further represents that a Trustee in Bankruptcy has been duly elected for E. Martin & Company and that the Trustee is administering the property of the said E. Martin & Company under the directions of the United States Bankruptcy Court and that the said Trustee has notified Relator that he claims and will claim any property which there may be in Relator's hands belonging to E. Martin & Company. Relator shows that the Trustee in Bankruptcy is thus claiming (as under the Bankruptcy Law he is entitled to claim) everything which the Plaintiff in the attachment proceedings in the Civil District Court could obtain by those proceedings; and

that Relator is thus threatened with conflicting claims in different Courts.

Your Relator shows that by virtue of the circumstances hereinabove recited, the said Civil District Court for the Parish of Orleans was and is without jurisdiction to maintain an attachment proceeding instituted against an insolvent defendant within six days of an adjudication in bankruptcy, or to maintain a garnishment based upon such attachment proceedings, and that the said Civil District Court for the Parish of Orleans is accordingly without jurisdiction to uphold the said garnishment process or to require answers to be made thereto.

Relator annexed hereto copies of the petition and exceptions and of the testimony taken on the trial of the said exceptions in the above entitled and numbered cause.

Relator further avers that due notice of this application for a writ of prohibition has been given to the Honorable E. K. Skinner,
49 Judge of Division "C" for the Parish of Orleans.

Wherefore, Relator prays that a writ of prohibition may issue herein, according to law, directed to the Honorable E. K. Skinner, Judge of Division "C" of the Civil District Court for the Parish of Orleans, and to Lehman, Stern & Company, Limited, Plaintiff in the suit entitled "Lehman, Stern & Company, Limited vs. E. Martin & Company," No. 99,923 of the docket of the said Court, forbidding the said Judge and the said Plaintiff from proceeding further in the said cause as against Relator, the Garnishee, and that they do show cause, if any they can or have, upon such a day and at such an hour as this Honorable Court may assign, why the said writ of prohibition should not be made perpetual.

And Relator prays for costs and for all general and equitable relief.

(Signed) HALL, MONROE & LEMANN,
Attorneys.

Before me, the undersigned authority, personally came and appeared Henry E. Gumbel, who being duly sworn, did depose and say: That he is the President of S. Gumble & Company, Ltd., the Relator herein, and that all the facts and allegations contained in the foregoing petition are true and correct, to the best of his knowledge and belief, and that he is duly authorized to make this affidavit.

(Signed) H'Y E. GUMBLE.

Sworn to and subscribed before me this 24th day of June, 1912, at New Orleans, Louisiana.

(Signed) [SEAL.] GUSTAF R. WESTFELDT,
Notary Public.

50 *Application Granted.*

Order.

The foregoing petition having been read and considered:
It is ordered That a rule nisi issue herein to the Honorable E. K.

Skinner, Judge of the Civil District Court for the Parish of Orleans, State of Louisiana, and to Lehman, Stern & Company, Limited, Plaintiff in the suit entitled "Lehman, Stern & Company, Limited, vs. E. Martin," No. 99,923 of the docket of said court, commanding them to show cause on the 29th day of June, in the year 1912, at eleven o'clock A. M., why a writ of prohibition should not issue herein.

New Orleans, La., June 25th, 1912.

(Signed) W. B. SOMMERVILLE,
Associate Justice of the Supreme Court of the State of Louisiana.

(Signed.)
W. B. S.
J. A. B.
A. D. L.

Service accepted
(Signed) E. K. SKINNER, *Judge.*

51 *Answer of Lehman, Stern & Company.*

Supreme Court of Louisiana.

No. 19521.

LEHMAN, STERN AND COMPANY, LIMITED,
versus
E. MARTIN AND COMPANY et als.

In re S. GUMBLE AND COMPANY, LIMITED, Applying for a Writ of Prohibition.

Into this Honorable Court now comes Lehman, Stern and Company, Limited, Plaintiff, and for answer to the rule nisi issued herein says:

That the said rule should be recalled and the relator's application denied for the reasons set forth in full in respondent's brief filed herein, which is hereby made a part of this answer, the same as if set out in full herein.

All of which is respectfully submitted to this Honorable Court for such orders as it may deem just and proper in the premises.

(Signed) DENEGRE & BLAIR,
(Signed) H. H. CHAFFE,
Atty's.

(Endorsed:) No. 19,521. Supreme Court of Louisiana. Lehman, Stern and Company, Limited vs. E. Martin and Company et als. In re S. Gumbel and Company, Limited, applying for a writ of Prohibition. Filed June 28th, 1912. (Signed) Paul E. Mortimer, Clerk.

52 *Return of Judge.*

Supreme Court of Louisiana.

No. 19521.

LEHMAN, STERN AND COMPANY, LIMITED,
vs.
E. MARTIN AND COMPANY et als.

In re S. GUMBEL AND COMPANY, LIMITED, Applying for a Writ of Prohibition.

Into this Honorable Court now comes E. K. Skinner, Judge of the Civil District Court for the Parish of Orleans, Division C., and, upon his official oath, for answer to the rule nisi issued herein, says:

On the 13th day of March, 1912, Lehman, Stern and Company, Limited, filed suit against E. Martin and Company, a commercial partnership, and the individual members thereof, alleging that it had, on the 12th day of March, 1912, sold and delivered to defendant partnership 392 bales of cotton for the price of $19,238.53 payable cash, and that no part thereof had been paid. Plaintiff claimed that it was entitled to a vendor's lien on the said cotton (under Act 63 of 1890, p. 51) to secure the payment of the said purchase price. The necessary allegations were made and sworn to warranting the issuance of writs of attachment and sequestration and, on plaintiff giving bond, the writs were issued. Various parties were made garnishees, some of whom have filed their answers, one admitting in its answer that it had in its possession part of the cotton on which plaintiff claims a vendor's lien. This garnishee, a railroad company, sets up no claim of ownership, or any other right in, to or upon the cotton except that it be paid its reasonable and proper charges for transporting and storing it.

Prior to the lapse of the ten days allowed by law to garnishees within which to file their answers, the defendants in the suit were adjudged voluntary bankrupts.

53 Thereupon, S. Gumble and Company, and the Hibernia Bank and Trust Company, garnishees, filed exceptions to the further proceedings in this Court solely on the ground that the defendants had been adjudged bankrupts on March 19, 1912. W. B. Thompson, Receiver of Martin and Company, duly appointed by the United States Court in Bankruptcy, and after having obtained its authority "to appear and take proper action in the various proceedings pending in the Civil District Court for the Parish of Orleans," intervened in this suit and filed a similar exception.

These exceptions were heard, argued and the matter submitted to the Court for adjudication. I overruled the exceptions and or-

dered the garnishees to answer the interrogatories to them propounded; for the following reasons:

The plaintiff is seeking to enforce against specific property a vendor's lien which is granted by Act 63 of 1890, p. 51. It invoked the powers of this Court at a time when no other Court was open to it. The defendants were served with citation and the writs were issued and garnishment process served prior to the adjudication of the defendants in bankruptcy. As above stated, one of the garnishees has answered admitting that it has in its possession some of the cotton on which plaintiff claims a vendor's lien. If either or both of the two garnishees who have filed exceptions have in their possession, or had at the time of service herein, the balance of the cotton on which plaintiff claims a vendor's lien, then this Court seized, prior to the Bankruptcy, and had under its control and subject to its jurisdiction all of the cotton on which the statutory lien rests. But even if they had none of this cotton the court has seized the part admitted by one garnishee to be in its hands.

Under the well settled jurisdiction of this State, and of the United States Courts, where a State Court has jurisdiction
54 of the parties, and prior to bankruptcy of the defendant, has seized the property on which the plaintiff claims a statutory lien, the jurisdiction of the State Court is not ousted by the adjudication in bankruptcy of the defendant. The facts of this case, as shown by the record, bring it within this rule.

De Grillean vs. Boem, 106 La. 472; Schall vs. Kinsella, 117 La. 687. Trager & Co. vs. Cavaroc & Co., 123 La. 319. A. Lehman & Co. vs. Rivers, 110 La. 1079. In re Seebold, 105 Fed. 914. Metcalf vs. Baker, 187 U. S. 165. Carling vs. Seymour Lumber Co. 113 Fed. 490.

In re Kane, 152 Fed. 587. In re Pennell, 159 Fed. 500.

It was argued that Section 67 of the National Bankruptcy Act strikes with nullity the writ of attachment. This section refers to the lien acquired by the writ, but does not affect the writ itself when employed to hold property on which a statutory lien is claimed. This Court has held in the cases cited above that where the lien sought to be enforced (as in this case) is a statutory lien, and the property is held by the Court under "a conservatory writ," the jurisdiction of the State Court and the writ issued thereby are not affected by the defendant's adjudication in bankruptcy. In one of these cases the writ employed by the Court to hold the property was a writ of provisional seizure, and the grasp of the Court on property is no less firm and the property is just as effectively seized by the Court when it is held under a writ named attachment as when under a writ named provisional seizure. One of the interrogatories propounded to garnishee asks the specific question as to whether or not garnishee has — its possession etc. any of the cotton on which plaintiff claims a vendor's lien.

Scholefield vs. Bradlee, 8 Martin O. S. 510. Bean vs. Mississippi Union Bank, 5 Rob. 333. Dennistown vs. New York Croton and Steam Faucet Co. 12 An. 782. Dwight vs. Mason, 12 An 846. Parmely vs. Bradbury, 13 La. 353. Greff & Byrnes vs. Batterson,

18 A. 349. Penn vs. Farrenberg, 28 An. 242. Golson & Co. vs. Powell, 32 A. 522. Buddig vs. Simpson, 33 A. 375. Go-
55 milla vs. Milliken, 41 A. 123. A. Lehman & Co. vs. Rivers, 110 La. 1079.

It was next urged, in argument, that as plaintiff was claiming a statutory lien, it could not invoke the writ of attachment to enforce that lien. While this contention does not, even if correct, affect the question of the jurisdiction of the Court, as it could only properly arise on a motion to dissolve the attachment, this Court has held that:

"An attachment may issue as well when there exists a lien as when there exists none." Gumbel and Co. vs. Beer, 36 A. 487.

There is nothing in principle or in the Code of Practice which prohibits the use of the writ of attachment in giving efficacy to a claim to and a subsequent judgment recognizing, a statutory lien on the particular property attached.

As a further objection to the jurisdiction of the Court it was urged that the title to property claimed by garnishee could not be tried on a rule to traverse his answers. This objection does not go to the jurisdiction of the Court, but rather to the method and form of procedure in the course of the trial. See Rice, Stix Dry Goods Co. vs. D. G. Saunders, 59 So. Rep. 413. As neither of the objecting garnishees has as yet admitted that it has in its possession any of the property on which plaintiff claims a vendor's lien and as neither has laid any claim of ownership or otherwise to it, it cannot be presumed that any such claim will be made. Should it be made in the answers hereafter filed, that question will be duly determined according to the pleadings and the law applicable thereto.

It was next contended that garnishees might be subjected to conflicting claims in different Courts. The representative of the creditors, duly appointed and authorized by the United States Court, has intervened in this proceeding and can here protect the rights of the general creditors of the bankrupt. It cannot be presumed that that Court will permit its officer to proceed in both
56 Court- at the same time for the same cause against the same parties. Should the State Court have jurisdiction, as I have decided it has, the United States Court would, on its attention being called to the fact, dismiss any proceedings by the trustee in which the cotton seized by this Court would be involved. In addition to this, if the garnishees be adverse claimants to the cotton involved in this suit then the United State- Court, unless garnishees consent, has no jurisdiction to try title thereto.

Eyster vs. Goff, 91 U. S. 521. Border vs. Hawarden Bank, 178 U. S. 524. Louisville Trust Co. vs. Cominger, 184 U. S. 18. Jaquith vs. Rowley, 188 U. S. 620.

First National Bank of Chicago vs. Chicago Title and Trust Company, 198 U. S. 280.

Another contention of relator's was that the attachment was general in terms and had the effect of conferring a privilege on all of the assets in their hands, if any, belonging to defendants.

While the writ of attachment did, when issued and served, have

that effect, by the adjudication in bankruptcy of the defendants, the scope and power of the writ has been curtailed to the extent of holding within the grasp of the Court only the cotton on which plaintiff claims a vendor's lien. But the fact that part of the property seized should be, and in law now stands released, does not affect the validity or the efficacy of the seizure of the remaining property nor is the jurisdiction of the State Court to determine the rights of the plaintiff thereon ousted thereby. This principle was recognized by this Court in Trager vs. Cavaroc and Co. 123 La. 319. Carling vs. Seymore Lumber Co. 113 Fed. 490.

Comment was also made on the fact that the lien herein sought to be enforced arose within a few days of the adjudication in bankruptcy. The sworn allegation of the petition is that the
57 sales from which the debt arose were made on the 12th day of March, 1912. It was then that the vendor's lien sprung into existence. Such a lien, acquired under circumstances, is not affected by the bankruptcy of the purchaser. A lien acquired in good faith for a present consideration is not affected by the bankruptcy of the debtor, even through it be acquired within four months of the adjudication.

In the case of Schall vs. Kinsella, 117 La. 687, the writ issued on August 1, 1905, and the defendant was adjudicated a bankrupt on August 15, 1905, just fifteen days thereafter. This Court upheld the jurisdiction of the State Court and maintained the writ.

The fact that two of the garnishees (relator being one) have not yet filed their answers does not affect the validity of the seizure in their hands of the cotton on which the plaintiff claims a vendor's lien, as the seizure was effected and the property came with- the grasp of the Court at the moment of service on them, which was prior to the institution of bankruptcy proceedings.

All of which is respectfully submitted to this Honorable Court for such orders as it may deem just and proper in the premises.

(Signed) E. K. SKINNER,
Judge of the Civil District Court for the Parish of Orleans, Division C.

(Endorsed:) No. 19521. Supreme Court of Louisiana. Lehman, Stern and Company, Limited, vs. E. Martin and Company et als. Return of E. K. Skinner, Judge of Civil District Court, Division C. To Rule Nisi. Filed June 28, 1912. (Signed) Paul E. Mortimer, Clerk.

58 *Called-Appearance and Submitted.*

(Extract from Minutes.)

NEW ORLEANS, *Saturday, June 29th*, 1912.

The court was duly opened, pursuant to adjournment. Present their Honors:—Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

No. 19521.

LEHMAN, STERN & COMPANY, LTD.,
vs.
E. MARTIN & COMPANY et al.

In re S. GUMBLE & COMPANY, LTD., Applying for a Writ of Prohibition.

This cause coming on this day to be heard, was submitted to the court for its consideration upon the papers on file.

Final Judgment.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *October* 21*st*, 1912.

The court was duly opened, pursuant to adjournment. Present their Honors:—Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

His Honor, Mr. Justice Land, pronounced the opinion and judgment of the Court in the following case:—

No. 19521.

LEHMAN, STERN & COMPANY, LTD.,
vs.
E. MARTIN & COMPANY et al.

In re S. GUMBLE & COMPANY, LTD., Applying for a Writ of Prohibition.

It is, therefore, ordered that peremptory writs of prohibition issue as prayed for by the relator in his petition.

59 *Opinion.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *October* 21*st*, 1912.

The Court was duly opened, pursuant to adjournment.

Present:

Their Honors, Joseph A. Breaux, Chief Justice; Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, Associate Justices.

His Honor, Mr. Justice Land, pronounced the opinion and judgment of the Court in the following case:

60 MONDAY, *October* 21*st*, 1912.

No. 19521.

LEHMAN, STERN & COMPANY, LTD.,
VS.
E. MARTIN & COMPANY et al.

In re S. GUMBLE & COMPANY, LTD., Applying for a Writ of Prohibition.

Mr. Justice LAND:

On March 13, 1912, the plaintiff sued the defendant to recover the sum of $19,238.53, representing the cash price of 392 bales of cotton, no part of which had been paid. The petition represents that the checks given by defendant for said price were worthless and payments of the same *were* refused by the drawees, and that the bills of lading for said cotton were fraudulently delivered by defendant to S. Gumble & Co., the relator. The petition represents that said cotton was in the possession of the railroads, which had issued said bills of lading.

The plaintiff represents that it is entitled to a vendor's lien on all of said cotton under Act 63 of 1890, and prayed for a writ of sequestration, directing the seizure of the cotton and bills of lading, and also for writs of attachment. The relator, and the Hibernia Bank & Trust Co. and other parties were duly made garnishees. It does not appear that any of the cotton described in the petition was seized under the writ of sequestration. It appears, however, that the New Orleans, Texas & Mexico Railroad Company, as garnishee, answered that it had possession of 52 bales of the cotton, but the same was claimed by S. Gumble & Co. Ltd., as holder of the original bills of lading.

Gumble & Co. excepted to the garnishment, and to the jurisdiction of the court on the ground that the defendant firm and all of
61 its members had been duly adjudicated bankrupts in the U. S. District Court for the Eastern District of Louisiana on March 19, 1912.

The Hibernia Bank & Trust Co. filed a similar exception. The receiver of the bankrupts intervened in the suit, and also excepted on the ground that the court had been divested of all jurisdiction in the matter and the conservatory writs issued in the suit had been dissolved by the adjudication in bankruptcy. The receiver prayed that the proceedings be dismissed and the parties relegated to the proper court of bankruptcy to determine their conflicting claims.

The court below overruled the exceptions and ordered the garnishees to answer, for the following reasons:

"The plaintiff is seeking to enforce against specific property a vendor's lien which is granted by Act 63 of 1890, p. 51. It invoked the powers of this Court at the time when no other Court was open to it. The defendants were served with citation and the writs were issued and garnishment process served prior to the adjudication of

the defendants in bankruptcy. As above stated one of the garnishees has answered admitting that it has in its possession some of the cotton on which plaintiff claims a vendor's lien. If either or both of the two garnishees, who have filed exceptions, have in their possession, or had at the time of service herein, the balance of the cotton on which plaintiff claims a vendor's lien, then this Court seized prior to the Bankruptcy, and had under its control and subject to its jurisdiction all of the cotton on which the statutory lien rests. But even if they had none of this cotton the court has seized the part admitted by one garnishee to be in its hands."

"Under the well settled jurisprudence of this State, and of the United States Courts, where a State Court has jurisdiction of
62 the parties, and prior to bankruptcy of the defendant has seized the property on which the plaintiff claims a statutory lien, the jurisdiction of the State Court is not ousted by the adjudication in bankruptcy of the defendant." (Citing authorities.)

By Act 63 of 1890, p. 51, there was granted to any person who may sell the agricultural products of the United States in any chartered city or town of the State of Louisiana, "a special lien and privilege thereon, to secure the payment of the purchase money for and during the space of five days only after the day of delivery; within which time the vendor shall be entitled to seize the same in whatsoever hands or place found, and his claims for the purchase money shall have preference over all others."

The plaintiff contends that the cotton sold was seized under garnishment process, and having been thus brought under the control of the State Court, was subjected to its vendor's lien and privilege.

Art. 246 of the Code of Practice provides in part as follows: "The property and effects in the possession of a third person, belonging to the defendant, or debts due by him to such defendant, shall be decreed to be levied as by the sheriff from the date of the service of the interrogatories on such persons." Such seizure, however, is merely constructive. The property remains in the possession of the garnishee, and the court has no authority to order its delivery to the sheriff until the plaintiff obtains a final judgment against the defendant maintaining the attachment. If the attachment be dissolved, all seizures under the writ, actual and constructive, are necessarily released.

Sec. 67 of the U. S. Bankruptcy act reads as follows:

"All levies, judgments, attachments, or other liens ob-
63 tained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of the petition in bankruptcy, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same." It goes without saying, that the attachment sued out by the plaintiff was stricken with the nullity denounced by the federal statute, and the property affected by the attachment was discharged and released from the same. Under said section, which is the supreme law of the land, after an adjudication

in bankruptcy, a State Court has no jurisdiction to hold property under an attachment for any purpose. A proceeding which becomes null and void can no longer produce any legal effect. A State Court cannot retain the possession of property which the federal statute declares shall be wholly discharged and released from a levy, attachment or judgment.

Counsel for the plaintiff, in their very able and learned brief, have endeavored to bring this case within the purview of authorities, federal and state, holding that even, after an adjudication in bankruptcy, a State Court, in actual possession of property subject to a mortgage, pledge or statutory lien, has jurisdiction to enforce the same by a sale of the property. We premise with the statement that in not one of the cases cited were the proceedings by attachment. The Louisiana cases involved the enforcement of the lessor's privilege and pledge by provisional seizure or by opposition on property or funds in the actual custody of the State Court. See I. Trager Co. vs. Cavaroc Co., 123 La. 319. If the plaintiff had executed the writ of sequestration by the seizure of any of the cotton alleged to have been sold to the defendant, the case would be different. But this writ, specially provided by law for the enforcement of
64 liens and privileges on movables (C. P. Art. 274 No. 7) was not executed on any of the cotton described in the petition. Plaintiff also sued out writs of attachment to reach the property generally of the defendant in the hands of third persons. One of the common carriers made a garnishee admitted the possession of 55 bales of cotton described in the petition, but at the same time further answered that it was bound to deliver the same to the holder of the bills of lading covering the shipment, and that the relator held the bills of lading, and had demanded the delivery of the cotton. This constructive levy on the 55 bales of cotton necessarily fell with the attachment, and the property was released by the force of the federal bankrupt act.

It is, therefore, ordered that peremptory writs of prohibition issue as prayed for by the relator in his petition.

Syllabus.

Sec. 67 of the U. S. Bankrupt Act strikes with nullity all attachments sued out against an insolvent within four months prior to the filing of the petition in bankruptcy, and wholly discharges and releases the property affected by the attachment, if the insolvent is adjudged a bankrupt. Hence, a State Court has no jurisdiction in such a case, to enforce garnishment process under a writ of attachment against property in the hands of a third person, for the purpose of subjecting the same to a vendor's lien and privilege claimed by the plaintiff, but not enforced by seizure of the property under some other writ.

65 *Petition for Rehearing.*

Supreme Court of Louisiana.

No. 19521.

LEHMAN, STERN AND COMPANY, LIMITED,
vs.
E. MARTIN AND COMPANY et als.

In re S. GUMBEL AND COMPANY, LIMITED, Applying for a Writ of Prohibition.

To the Honorable the Supreme Court of Louisiana:

Plaintiffs, Lehman, Stern and Company, Limited, Respectfully pray for a rehearing of this cause on the following grounds:

Your Honors have ordered that peremptory writs of prohibition issue as prayed for by the relator in his petition because,

"Section 67 (Subdivision *f*) of the United States Bankruptcy Act strikes with nullity all attachments sued out against an insolvent within four months prior to the filing of the petition in bankruptcy, and wholly discharges and releases the property affected by the attachment, if the insolvent is adjudged a bankrupt. Hence, a State Court has no jurisdiction in such a case, to enforce garnishment process under a writ of attachment against property in the hands of a third person, for the purpose of subjecting the same to a vendor's lien and privilege claimed by the plaintiff, but not enforced by seizure of the property under some other writ."

Your Honors, (Page 4 of Opinion) after quoting Section 67 (subdivision *f*) of the Bankruptcy Act, say

"Under said section, which is the supreme law of the land after an adjudication in bankruptcy, a State Court has no jurisdiction to hold property under a writ of attachment for any purpose. A proceeding which becomes null and void can no longer produce any legal effect. A State Court cannot retain possession of prop-
66 erty which the Federal statute declares shall be wholly discharged and released from a levy, attachment and judgment."

Section 67 (*f*) of the Bankruptcy Act, reads:

"All liens, judgments, attachments, or other liens obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of the petition in bankruptcy, shall be deemed null and void in case he is adjudged a bankrupt and the property affected by the levy, judgment, attachment, or other lien shall be wholly discharged and released from the same."

Your Honors interpret the quoted section of the Bankruptcy law to mean that all levies, judgments and attachments whatsoever obtained within four months prior to adjudication are rendered null and void by the adjudication in bankruptcy, and hold that the federal statute declares that all property seized within four months of adjudication in bankruptcy under all levies, attachments

and judgments shall be wholly discharged and released from such levy, attachment or any judgment "because they are stricken with nullity."

Petitioners, Lehman, Stern and Company, Limited, respectfully submit that Section 67 (Subdivision *f*) of the Bankruptcy Act does not strike with nullity all attachments sued out within four months of bankruptcy, but that the Bankruptcy Act only strikes with nullity liens obtained solely through attachments, judgments, levies and other liens obtained through judicial proceedings, and does not dissolve the attachments, judgments, and levies themselves, or affect them, except in so far as it refuses to give them any effect as per se conferring liens. If the levies or attachments are simply to enforce valid subsisting liens granted by law, such liens are not affected by bankruptcy which annuls only liens resulting solely and exclusively from the process itself, and subdivision *f* of Sec-
67 tion 67 of the Bankruptcy law must be interpreted as if it read as follows:

"All (liens obtained through) levies, all (liens obtained through) judgments, all (liens obtained through) attachments, or other liens obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of the petition in bankruptcy, shall be deemed null and void in case he is adjudged a bankrupt, etc."

Petitioners, Lehman, Stern and Company, Limited, show that in the case at bar they are claiming no lien by virtue of the writ of attachment issued in their behalf, but are seeking the enforcement of a vendor's lien given by law; that their vendor's lien is not affected by the Bankruptcy Act; that the writ of attachment was used only to place the property in custodia legis in order to subject it to this lien, and that a writ of attachment and seizure under these conditions are not affected by the Bankruptcy Law.

It being well settled law that where a State Court has jurisdiction of the parties, and, prior to bankruptcy, has seized the property on which the plaintiff claims a statutory lien, the jurisdiction of the State Court is not ousted by the adjudication in bankruptcy, the Civil District Court in this case had, and has, jurisdiction over the controversy and it is for that Court alone to pass upon the existence and validity of the lien and the effect of the attachment.

In Henderson vs. Mayer, 225 U. S. 631, decided by the Supreme Court of the United States June 7, 1912, the points raised are decided in our favor.

See also

Doyle vs. Heath, Supreme Court of Rhode Island, 47 Atlantic Reporter 213.

In re Beaver Coal Company, 110 Federal Reporter 630.

In re Blair, 108 Federal Reporter, 529.

In Metcalfe vs. Barker, 187 U. S. 175, a lien obtained by the filing of a creditor's bill more than four months prior to bankruptcy
68 was recognized and rendered effective by a judgment entered within four months of bankruptcy. It was contended in that

case and decided by the lower court that the lien created by the filing of the judgment creditor's bill was "contingent upon the recovery of a valid judgment, and liable to be defeated by anything which defeats the judgment, or the right of complainants to appropriate the fund"; that "such a contingent or equitable lien cannot be superior to the judgment on which it depends to make it effective, but must stand or fall with the judgment itself," and that Section 67 (subdivision *f*) of the Bankruptcy Act declaring judgments obtained within four months "shall be deemed null and void," necessarily prevented the complainants from acquiring any benefit from the lien or fund attached. The Supreme Court of the United States answered that (p. 174) "A judgment or decree in enforcement of an otherwise valid pre-existing lien is not the judgment denounced by the statute, *which is plainly confined to judgments creating liens.*" (Italics ours) and at page 175, "The State Court had jurisdiction over the parties and the subject matter, and possession of the property. And it is well settled that where property is in the actual possession of the court, this draws to it the right to decide upon conflicting claims to its ultimate possession and control."

Petitioners, Lehman, Stern and Company, Limited, show that the lien claimed by them is independent of the attachment; that it came into existence coincidently with the sale of cotton made by them to Martin and Company and was part of the condition of that sale, given by Act 63 of 1890 (P. 51), which gives to the vendor of agricultural products a special lien and privilege to secure the payment of the purchase money for and during the space of five days only after the day of delivery," within which time the vendor shall be entitled to seize the same in whatsoever hands or
69 place it may be found, and his claims for the purchase money shall have preference over all others."

It is respectfully urged that it is manifest that if this highly favored lien cannot be enforced by attachment, then the right granted by statute to seize the cotton "in whatsoever hands it may be found" will be of little avail. A sequestration is only effective where the property can be pointed out, the vendor of cotton may know positively that it is in the custody, control and possession of a third person, indeed such third person may admit possession, and yet be perfectly safe if the vendor is not able to point out the cotton itself. All that the third person has to do is to defy the vendor until the expiration of the five days from the delivery if it be true that the lien can only be enforced by sequestration. That such is the law cannot be possible, but we respectfully urge that it is clear that the question of whether the lien can be enforced by attachment as well as by sequestration is a question to be passed upon by the State Court, and is not involved in the present application of Gumbel and Company, which involves only a question of jurisdiction. The Civil District Court having jurisdiction and control of the property seized is the only Court competent to pass on all other questions raised by Gumbel and Company and those questions must be first passed upon by that Court before this Court can consider them.

The sole question before this Court is whether the Civil District

Court had jurisdiction of this suit when it was filed, and that being conceded, whether its jurisdiction was divested by the Bankruptcy Act, Section 67 (subdivision *f*) and the Supreme Court of the United States has decided, as above shown, that the jurisdiction of the Civil District Court was not thereby divested.

70 Lehman, Stern and Company, Limited, submit this application for a rehearing and file a brief elaborating the argument and showing in support thereof within delay allowed by the Court.

(Signed) DENEGRE & BLAIR,
(Signed) By GEO. DENEGRE,
(Signed) H. H. CHAFFE,
Att'ys for Lehman, Stern & Co., Ltd.

(Endorsed:) No. 19521. Supreme Court of Louisiana. Lehman, Stern and Company, Limited vs. E. Martin and Company et als. In re S. Gumble and Company, Limited applying for a writ of Prohibition. Application for rehearing on behalf of Lehman, Stern and Company, Limited. Filed Oct. 31, 1912. (Signed) John A. Klotz, Dep. Clerk.

71 *Rehearing Granted.*

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *November 18th*, 1912.

The Court was duly opened, pursuant to adjournment.

Present:

Their Honors, Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 19521.

LEHMAN, STERN & CO., LTD.,
VS.
E. MARTIN & CO. et al.

In re S. GUMBLE & CO., LIMITED, Applying for a Writ of Prohibition.

By the COURT:

It is ordered that the rehearing applied for in this case be granted.

Called—Appearance and Submitted.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *February 3rd*, 1913.

The Court was duly opened, pursuant to adjournment.

Present:

Their Honors, Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 19521.

LEHMAN, STERN & COMPANY, LTD.,
vs.
E. MARTIN & Co. et al.

In re S. GUMBLE & COMPANY, LIMITED, Applying for a Writ of Prohibition. (On Rehearing.)

This case coming on this day to be heard, was submitted to the court for its consideration upon the papers and briefs heretofore filed in the cause.

72 *Final Judgment on Rehearing.*

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *March 3rd*, 1913.

The Court was duly opened, pursuant to adjournment.

Present:

Their Honors, Joseph A. Breaux, Chief Justices, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

His Honor, the Chief Justice, pronounced the opinion and judgment of the court in the following case:

No. 19521.

LEHMAN, STERN & COMPANY, LTD.,
vs.
E. MARTIN & Co. et al.

In re S. GUMBLE & COMPANY, LIMITED, Applying for a Writ of Prohibition. (On Rehearing.)

It is therefore, ordered, adjudged and decreed that the judgment heretofore rendered by this Court is re-instated and made the judg-

ment of this Court, and plaintiff's demand on re-hearing is rejected at its costs.

His Honor, Mr. Justice Provosty, dissents.

73 *Opinion of the Court on Rehearing.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *March* 3, 1913.

The Court was duly opened, pursuant to adjournment.

Present:

Their Honors, Joseph A. Breaux, Chief Justice; Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, Associate Justices.

His Honor, The Chief Justice, pronounced the opinion and judgment of the Court in the following Case:

74 No. 19521.

LEHMAN, STERN & COMPANY, LTD.,
vs.
E. MARTIN & Co. et al.

In re S. GUMBEL & COMPANY, LTD., Applying for a Writ of Prohibition.

On Rehearing.

BREAUX, *C. J.:*

The bankruptcy act is not destructive of rights already existing at the time that the writ of attachment issues. It gives effect to all liens except those growing out of the attachment itself. We will not discuss any proposition save that the writ of garnishment does not hold the property nor does it issue to compel the delivery of a specific thing.

Hanna vs. Moran, 11 Martin, 276.

We have carefully considered the authorities cited of a date comparatively recent and those of a remote date. We have not found that they would justify us in insisting upon the jurisdiction of the State Courts.

As relates to Federal decisions cited: they are not pertinent to the issues here.

In the last decision in date, confidently cited by learned counsel, Henderson vs. Mayer, Vol. 225, p. 639, the plaintiff had obtained

a distress warrant for rent, which is the Common Law expression in matter of proceeding for rent. There was a direct seizure of the property and in that way it was brought within the jurisdiction of the State Court.

We have not found any decision under which it is possible to maintain the garnishment in this case. There is only one
75 exception, to-wit: Gumbel & Co. vs. Beer, 36 A., 494, if it be an exception, as it was not decided by a unanimous court; moreover, it does not involve a construction of the bankruptcy law. The case is not absolutely similar nor pertinent.

We will state by way of illustration that in case of a provisional seizure the property is seized and brought within the jurisdiction of the Court; also in case of a foreclosure of a mortgage. It is different in garnishment proceedings in that the property remains in the possession of the garnishee and may never be delivered to the Court. Furthermore, there can be no judgment before a judgment has been obtained against the defendant. There will never be a judgment rendered in the State Court against defendant whose property has been surrendered.

Collins and Leake vs. Friend, 21 A., 7.
Proseus vs. Mass, 12 La., 16.
Caldwell vs. Townsley, 5 N. S., 307.

The question is exclusively one of jurisdiction. Whatever rights plaintiff has will have to be asserted in other proceedings. In other words the rights of parties have been transferred and will have to be asserted in the United States Courts. The State Court has never had possession of the property, and that is indispensable to its jurisdiction under the bankruptcy law.

It would be different if the property had been taken possession of under the writ of sequestration.

It is, therefore, ordered, adjudged and decreed that the judgment heretofore rendered by this Court is re-instated and made the judgment of this Court, and plaintiff's demand on re-hearing is rejected at its costs.

Provosty, J., Dissents.

76 *Syllabus.*

An attachment by means of a writ of garnishment does not change the possession of the property and place it either — the possession of the court, or the one who has obtained the writ, for it may be that the property may never pass out of the hands of the garnishee. The writ of attachment does not, therefore, create any lien in favor of the attaching creditors which is recognized by the bankruptcy law, and the property is subject to the jurisdiction of the bankrupt court notwithstanding the attachment, and it is in that court that the attaching creditors must assert his rights against the debtor.

77 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing seventy-six (76) pages, contain a full, true and complete transcript of the proceedings had in the Civil District Court, for the Parish of Orleans, in a certain suit in which Lehman, Stern & Co. Ltd., was plaintiff, and E. Martin & Company, et al., were defendants, as per agreement between counsel, page 94 of this transcript. And, also, of all the proceedings had in this Honorable Court on the application of S. Gumbel & Co. Ltd., applying for a writ of prohibition, which application is now on the files of this Court under the No. 19,521.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at the city of New Orleans, this the 8th day of April, 1913.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court Louisiana.

78 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 8th day of April, A. D. one thousand, nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice Supreme Court of Louisiana.

79 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the

Honorable Joseph A. Breaux is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In witness whereof I hereunto set my hand and the seal of the Court aforesaid, at the city of New Orleans, this the 8th day of April, A. D. one thousand, nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

80 *Petition for Writ of Error.*

In the Supreme Court of the United States, — Term, 1913.

LEHMAN, STERN & CO., LTD.,
vs.
E. MARTIN & CO. et als.

To the Honorable the Chief Justice of the Supreme Court of Louisiana:

The petition of Lehman, Stern and Company, Limited, a corporation organized under the laws of the State of Louisiana, through its president, Maurice Stern, respectfully shows:

That on the 21st day of October 1913, the Supreme Court of Louisiana, rendered a judgment in a certain case entitled Lehman, Stern and Company, Limited, vs. E. Martin and Company et als., In re S. Gumbel and Company, Limited, applying for writs of prohibition, No. 19,521 of the docket of the Court, which, after a decision on rehearing, became final on the 3rd day of March 1913.

That in said cause your petitioner, on the 13th day of March 1912, brought suit against defendants, E. Martin and Company, et als., in the Civil District Court of the Parish of Orleans to recover a large sum of money due petitioner as consideration of sales of cotton, an agricultural product of the United States, made to said Martin and Company within five days from the date of filing suit and asserted, and sought to enforce, through writs of sequestration and attachment, the five days vendor's lien granted by Act 63 of the Acts of Louisiana of the year 1890 to the vendor of agricultural products of the United States.

The writs of sequestration and attachment, duly applied for and granted were issued; that no property was seized and taken into the possession of the sheriff under the writ of sequestration; that under the writ of attachment garnishment proceedings were had, S. Gumbel and Company, Limited, and others, were made garnishees; that one of the garnishees answered admitting holding in its possession some of the cotton sold as aforesaid, but said S. Gumbel and Company, Limited, and others of said garnishees declined to answer, excepting to the jurisdiction of the said Civil District Court, because the defendant firm of E. Martin and Company had been adjudicated bankrupt by the United States District Court for the Eastern Dis-

trict of Louisiana on March 20, 1912, and said S. Gumbel &
81 Company, Limited, claimed that by the effect of such adjudication in bankruptcy the said Civil District Court had been divested of all jurisdiction over the controversy, the Constitution and laws of the United States having, they claimed, vested in the United States District Court exclusive jurisdiction over said bankrupts and their property.

That the Civil District Court overruled the pleas to its jurisdiction and thereupon S. Gumbel and Company, Limited, applied to this Court for a writ of prohibition to prevent said Civil District Court from exercising jurisdiction in the premises.

That the question upon which the case turned was whether Section 67 subdivision *f* of the National Bankruptcy Act of 1898 declared null and void the attachment, and garnishment proceedings thereunder, taken out within four months of bankruptcy in aid of, or to enforce, the aforesaid statutory vendor's lien, no claim being made to any lien resulting merely from the writ of attachment itself.

That S. Gumbel & Company, Limited, applicant for the writ of prohibition, claimed that Section 67 *f* of the National Bankruptcy Act annulled all attachments whatsoever taken out within four months of bankruptcy, and your petitioner claimed that said Section annulled only all liens obtained solely and exclusively by attachments or other legal proceedings, and did not annul or affect attachments issued within four months of bankruptcy in aid of or to enforce a statutory lien, and that all valid liens were expressly recognized and preserved by the said Bankruptcy Act.

That Gumbel and Company claimed no property had been taken into the physicial possession of the Court, and no process had been executed except the garnishment under the attachment and this process was specifically annulled by the terms of the Bankruptcy Act, and the effect of the decision of the Civil District Court, assuming jurisdiction was to strike out the provision of the Bankruptcy Act annulling attachments and to maintain in the teeth of the Statute an attachment proceeding instituted within six days of bankruptcy, and petitioners claimed that by virtue of the writs of attachment and the garnishment proceedings some of the cotton affected by their statutory vendor's lien had been subjected to the con-
82 trol of the Civil District Court, that this control gave it jurisdiction to pass upon the questions affecting said portion of said cotton, and this jurisdiction was not divested by the Bankruptcy Act, but was recognized by said Act.

That this Court decided in favor of the claim of immunity made by applicant, S. Gumbel and Company, Limited, and denied the right claimed by petitioner under said National Bankruptcy Act to proceed with the trial of their suit against Martin and Company in the Civil District Court of the Parish of Orleans, State of Louisiana, and with the enforcement of their statutory vendor's lien by means of their writ of attachment and the garnishment proceedings thereunder taken out by them in aid of and to enforce said vendor's lien, the jurisdiction of the Civil District Court, at the time suit was filed and the attachment and garnishment taken out and executed, being

conceded and the sole claim being that such lawful and conceded jurisdiction was taken away by virtue solely of the provisions of the National Bankruptcy Act of 1898, and particularly by subdivision *f* of Section 67 thereof, which annulled and avoided all writs of attachment taken out within four months of bankruptcy.

That this Court thereupon decided that the Civil District Court of the Parish of Orleans had been deprived of jurisdiction over petitioner's said suit against E. Martin and Company, by virtue of the provisions of the National Bankruptcy Act of 1898, and particularly by Section 67, subdivision *f*, and therefore issued a writ of prohibition to the said Civil District Court for the Parish of Orleans, forbidding it to proceed further with said cause on the ground that cognizance of said cause did not belong to such Court and that it was not competent to decide it.

All of which appears from the record of the proceedings in said cause which is herewith submitted, together with petitioner's assignment of errors.

Your petitioner claims the right to remove the aforesaid judgment of the Supreme Court of this State and the said cause to the Supreme Court of the United States by writ of error under the statutes of the United States, to wit: Section 709 of Revised Statutes of the United States.

83 Wherefore petitioner prays the allowance of a writ of error returnable unto the Supreme Court of the United States, according to law and for citation and supersedeas.

DENEGRE & BLAIR,
HENRY H. CHAFFE,
Att'ys for Lehman, Stern & Co., Ltd.

LEHMAN, STERN & CO., LD.,
By MAURICE STERN, *Pt.*

Order.

Let a writ of error operating as a supersedeas be granted unto Lehman, Stern and Company, Limited, the petitioner herein, to the Honorable, the Supreme Court of the United States, upon its giving bond with good and solvent security and conditioned according to law in the sum of five thousand Dollars.

New Orleans, March 19, 1913.

JOS. A. BREAUX,
Chief Justice Supreme Court of Louisiana.

83½ [Endorsed:] No. 19521. Supreme Court Louisiana, Lehman, Stern & Co., Ltd., vs. E. Martin & Co. et als.—In re S. Gumbel & Co., Ltd.—applying for writ of prohibition, Petition for writ of error—Order granting writ, with supersedeas. Filed Mar. 19, 1913. Paul E. Mortimer, Clerk.

84 Supreme Court of the United States, — Term, 1913.

LEHMAN, STERN & CO., LTD.,
vs.
E. MARTIN & Co. et als.

Assignment of Errors.

Now comes Lehman, Stern and Company, Limited, plaintiff in error, by its counsel, and respectfully represents:

That it believes itself to be aggrieved by the proceedings and judgment of the Supreme Court of Louisiana in the above entitled cause, and assigns as error thereto as follows:

1. The Court erred in deciding that under the National Bankruptcy Act of 1898, Section 67 subdivision *f*, all attachments whatsoever taken out within four months of bankruptcy were annulled and made void.

2. That the Court erred in deciding that the writ of attachment taken out by plaintiff in error, Lehman, Stern and Company, Limited, against E. Martin & Company for the purpose of enforcing the five days' vendor's statutory lien granted by Act 63 of Louisiana of 1890 to Lehman, Stern and Company, Limited, was annulled and made void by section 67, subdivision *f* of the National Bankruptcy Act of 1898, and that the jurisdiction of the Civil District Court of the Parish of Orleans had, by reason of the provisions of the said National Bankruptcy Act, been divested of jurisdiction of and over the suit brought by Lehman, Stern and Company, the controversies therein and the writ of attachment sued out therein.

3. The Court erred in that the plaintiff in error, Lehman, Stern and Company, Limited, claimed a privilege and right to recover in said suit and to maintain the writ of attachment it had sued out because said writ of attachment had been sued out to enforce, protect and conserve a valid statutory vendor's lien granted by Act 63 of the Louisiana Legislature of 1890 to Lehman, Stern and Company, Limited, as the vendor of agricultural products of the United States to E. Martin and Company, the said suit being brought to recover the purchase price agreed to be paid by said E.
85 Martin and Company to Lehman, Stern and Company, Limited, for cotton, an agricultural product of the United States; that the said National Bankruptcy Act of 1898 expressly recognized and maintained all statutory and all valid liens, and that Section 67 subdivision *f* of the said National Bankruptcy Act only declared null and void any and all liens obtained solely by attachment or other legal proceedings within four months of bankruptcy, and Lehman, Stern and Company, Limited, not only laid no claim to any lien obtained solely by or through its said writ of attachment or through legal proceedings within four months of bankruptcy, but expressly disclaimed any such liens. That said National Bankruptcy Act therefore conceded and granted to Lehman, Stern and Company, Limited, the right to proceed with its suit and attach-

ment proceedings against E. Martin and Company in the Civil District Court for the Parish of Orleans, and the Supreme Court of Louisiana decided against the right, privilege and immunity thus specially set up and claimed.

4. The Supreme Court of Louisiana erred in holding that Section 67 subdivision *f* of the National Bankruptcy Act declared null and void not only liens obtained by attachment or judicial proceedings, within four months of bankruptcy, but also declared null and void all attachments, obtained within four months of bankruptcy irrespective of whether such attachments were sued out solely to enforce conserve and protect statutory or valid subsisting liens.

Thus deciding, that Court decided against the contrary contention of Lehman, Stern and Company, Limited, and the right, privilege and immunity thus specially set up and claimed.

5. The Court erred in holding that the jurisdiction of the Civil District Court was divested by the provisions and effect of the National Bankruptcy Act of 1898 for the further reason that said Civil District Court at the time of the adjudication in bankruptcy did not hold any property of the bankrupt in its physicial possession, and that said physical possession of property by said Court at the date of adjudication was required under the National Bankruptcy Act for the maintenance of its jurisdiction, because
86 the record shows and the Supreme Court found that under the writ of attachment and garnishment proceedings, one of the garnishees admitted having in its possession 52 (fifty-two) bales of cotton, on which Lehman, Stern and Company asserted the vendor's lien and said fifty-two (52) bales of cotton were thereby subjected to the full and exclusive control of the said Civil District Court; that said Court was fully vested with jurisdiction over the same, no Court could interfere with or take control from said court, whose control over said property was as effective for purposes of jurisdiction as if it had held physical possession thereof, and the National Bankruptcy Act did not under such circumstances divest the jurisdiction of the Civil District Court, or declare null and void the attachment and garnishment issued within four months in aid of and to enforce a lien granted by statute.

6. That the rights of Lehman, Stern and Company, Limited, in its case against E. Martin and Company, and in the controversy therein between it and E. Martin and Company and S. Gumbel and Company, Limited, and others, depend upon a question of Federal law, viz: the proper interpretation of the provisions of the National Bankruptcy Act of 1898, and it was and is the purpose of Congress and the aforesaid provision of the Revised Statutes of the United States that such questions should be finally decided for Lehman, Stern and Company, Limited, by the Supreme Court of the United States, if it so desired, when, as in this case, the decision of the State Court has been against Lehman, Stern and Company, Limited, on the question raised, and because rights of this character should not be left to the exclusive and final control of the State Courts.

Wherefore, Lehman, Stern and Company, Limited, plaintiff in

error, prays this Honorable Court to examine and correct the errors assigned, and for citation, and for a reversal of the judgment of the Supreme Court of Louisiana entered in the above entitled cause.

DENEGRE & BLAIR,
HENRY H. CHAFFE,
Att'ys for Lehman, Stern & Co., Ltd.

LEHMAN, STERN & CO., LD.,
By MAURICE STERN, *Pt.*

86½ [Endorsed:] No. 19521. Supreme Court Louisiana. Lehman, Stern & Co., Ltd., vs. E. Martin & Co. et al. In re S. Gumbel & Co., Ltd., applying for writ of prohibition, assignment of errors. Filed March 19, 1913. Paul E. Mortimer, Clerk.

87 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, New Orleans, Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Lehman, Stern & Company, Limited versus E. Martin & Co. et al., In re S. Gumbel & Company, Limited applying for writ of prohibition wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Con-
88 stitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Lehman, Stern & Company, Limited as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that

error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the said Supreme Court, the 19th day of March, in the year of our Lord one thousand nine hundred and thirteen.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER,
Clerk of the District Court of the United States for the Eastern District of Louisiana.

[Seal Supreme Court of the State of Louisiana.]

Allowed by

JOS A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] No. 19521. Supreme Court of the State of Louisiana. Lehman, Stern & Company, Limited, Plaintiffs in Error, versus S. Gumbel & Company, Limited, Defendants in Error. Writ of Error. Filed March 19th, 1913. Paul E. Mortimer, Clerk Supreme Court of Louisiana.

89 *Copy of Bond for Writ of Error.*

Know*n* all men by these presents, That we, Lehman, Stern & Company, Limited, of New Orleans, as principal, and Maurice Stern, as surety, of the City of New Orleans, are held and firmly bound unto S. Gumbel & Company, Limited, of the City of New Orleans, in the full sum of Five Thousand Dollars, to be paid to the said S. Gumbel & Company, Limited, successors, executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally by these presents.

Sealed with our seals and dated this 20th day of March, in the year of our Lord, 1913.

Whereas, lately at a session of the Supreme Court of Louisiana, holding session, in and for the State of Louisiana, in the suit pending in said Court entitled "Lehman, Stern & Company, Limited, plaintiff, against E. Martin & Company, et al., defendants. In re S. Gumbel & Company, Limited, applying for writ of prohibition," a judgment was rendered in favor of said S. Gumbel & Company, Limited, ordering that a peremptory writ of prohibition issue as prayed for by said S. Gumbel & Company, Limited, directed to Honorable E. K. Skinner, Judge Division C, Civil District Court, for the Parish of Orleans, and to Lehman, Stern & Company, Limited, forbidding the said Judge and said Lehman, Stern & Company, Limited, plaintiff in the above entitled suit from proceeding further in the said cause as against S. Gumbel & Company, Limited, the

garnishee, and the said Lehman, Stern & Company, Limited, having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Supreme Court of Louisiana to reverse the judgment rendered in the aforesaid suit, and a citation directed to said S. Gumbel & Company, Limited, citing and admonishing them to appear before the Supreme Court of the United States, to be holden at
90 Washington, D. C., within thirty days from the date hereof.

Now the condition of the above obligation is such that if the said Lehman, Stern — Company, Limited, shall prosecute its writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) LEHMAN, STERN & COMPANY, LIMITED,
(Signed) By MAURICE STERN, *President.*
[SEAL.] (Signed) MAURICE STERN.

Personally came and appeared before me, the undersigned Clerk of the Supreme Court of the State of Louisiana, Maurice Stern, who being duly sworn deposes and says that he is the surety on the foregoing bond, that he resides in the City of New Orleans, that he is worth the full sum of Five Thousand dollars over and above all his debts and liabilities, and property free from execution.

(Signed) MAURICE STERN.

Sworn to and subscribed before me, at the City of New Orleans, this the 20th day of March, A. D. 1913.

[SEAL.] (Signed) PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

The foregoing bond is approved.

(Signed) JOS. A. BREAUX,
Chief Justice Supreme Court of the State of Louisiana.

New Orleans, March 20th, 1913.

(Endorsed:) No. 19521. Supreme Court Louisiana. Lehman, Stern & Co., Limited, Plaintiffs in Error vs. S. Gumbel & Company, Limited, defendants in error. Bond. Filed Mar. 20, 1913. (Signed) Paul E. Mortimer, Clerk.

91 *Certificate of Lodgment.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that there was lodged with me, as such

clerk, on March 19th, 1913, in the matter of Lehman, Stern & Co., Ltd., plaintiffs in error vs. S. Gumbel & Company, defendant in error, No. 19,521.

First. The original petition for writ of error and the original assignment of errors, with the order granting the writ, as herein set forth.

Second. One original writ of error as herein set forth; also one copy of the writ of error to be served on defendants in error; and also one copy to be filed in my office.

Third. The original bond, of which a copy is herein set forth, and which bond was filed in my office on March 20th, 1913.

In testimony whereof, I hereunto set my hand and affix the seal of the court aforesaid, at the city of New Orleans, this the 8th day of April, A. D. 1913.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

92 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to S. Gumbel & Company, Limited, of the City of New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein Lehman, Stern & Company, Limited, are plaintiffs-in-error, and S. Gumbel & Company, Limited, are defendants-in-error, to show cause, if any there be, why the judgment rendered against the said Lehman, Stern & Company, Limited, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 20th day of March, in the year of our Lord one thousand nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of the State of Louisiana. No. 19521. Lehman, Stern & Company, Limited, Plaintiffs-in-error, vs. S. Gumbel & Company, Limited, Defendants-in-error. Citation. Filed Mar. 29, 1913. Paul E. Mortimer, Clerk Sup. Court, La.

Sheriff's Return.

Received Saturday, Mar. 22, 1913, and on the 25th day of March, 1913, I served a copy of the within Citation and accompanying writ of error on the S. Gumbel and Company, Limited, defendant herein by personal service on Henry E. Gumbel its president in the City of New Orleans, Parish of Orleans, State of Louisiana. Returned same day.

JOHN E. VILLA,
Deputy Civil Sheriff, Parish of Orleans,
State of Louisiana.

John Edward Villa Deputy Civil Sheriff, Parish of Orleans, State of Louisiana, being sworn, deposes and says that he made a personal service of the within Citation and accompanying writ of error on Henry A. Gumbel, President of the S. Gumbel Company, Limited, as stated in the above return.

JOHN E. VILLA.

Sworn to and subscribed before me at the City of New Orleans, March 29th, 1913.

[Seal Supreme Court of the State of Louisiana.]

JOHN A. KLOTZ,
Dep. Clerk Supreme Court of Louisiana.

93 *Return to Writ.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case together with all things concerning the same as per stipulation of counsel for both parties, a copy of which is attached to this transcript.

In Testimony Whereof I hereunto set my hand and affix the seal of the court aforesaid, at the city of New Orleans, this the 8th day of April A. D. 1913.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

94 *Stipulation Between Counsel.*

APRIL 7TH, 1913.

Hon. Paul E. Mortimer, Clerk Supreme Court of Louisiana, City.

DEAR SIR: It is hereby agreed between counsel for Lehman, Stern & Company, Ltd., and counsel for S. Gumbel & Co. Ltd., that the transcript to the Supreme Court of the United States in the case of Lehman, Stern & Co. Ltd. vs. E. Martin & Co. et al., In re S. Gumbel & Co. Ltd.," applying for a writ of prohibition shall consist of the following:

Original petition, affidavit, and order.
Supplemental Petition, order, and interrogatories.
Writ of attachment and returns thereon.
Two citations to S. Gumbel & Co. Ltd., and returns thereon, and
Two citations to N. O. Texas & Mex. R. R. Co. & returns thereon.
Two notices of seizure served on N. O. Texas & Mexico R. R. Co. and returns thereon.
Two notices of seizure served on E. Martin & Co. et al. and returns thereon.
Two notices of seizure served on S. Gumbel & Co. and returns thereon.
Exception of S. Gumbel & Co. Ltd.
Exception of Hibernia Bank & Trust Co.
Intervention of W. B. Thompson, Receiver.
Two answers of N. O. Texas & Mexico R. R. Co.
Copy of adjudication in Bankruptcy.
Petition and order authorizing W. B. Thompson, Receiver to appear in State Court.

All of the proceedings in the Supreme Court, except the brief filed on behalf of Lehman, Stern & Co. Ltd. as part of its answer to the writ issued by the Supreme Court to show cause why a writ of prohibition should not issue.

Where any of the above enumerated documents are included in the original record in the Supreme Court they need only be copied in the transcript once.

Yours very truly,

(Signed) DENEGRE & BLAIR,
" HENRY H. CHAFFE,
Att'ys for Lehman, Stern & Co., Ltd.
(Signed) HALL, MONROE & LEMANN,
Att'ys for S. Gumbel & Co., Ltd.

HHC/L.

95 (Endorsed:) No. 19521. Supreme Court Louisiana.—Lehman, Stern & Co., Ltd. vs. E. Martin & Co. et al., In re S. Gumbel & Co. Ltd., applying for a writ of prohibition. Stipulation between counsel as to preparation of transcript of appeal to the

Supreme Court of United States. Filed Ap'l 7th, 1913. (Signed) Paul E. Mortimer, Clerk.

A true copy.

Clerk's Office, New Orleans, April 8th, 1913.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

Endorsed on cover: File No. 23,635. Louisiana Supreme Court. Term No. 512. Lehman, Stern & Company, Limited, plaintiff in error, vs. S. Gumbel & Company, Limited. Filed April 15th, 1913. File No. 23,635.

United States Supreme Court.

OCTOBER TERM, 1914.

No. 146.

LEHMAN, STERN & COMPANY, LIMITED,
Plaintiff in Error,

versus

S. GUMBEL & COMPANY, LIMITED.

J. BLANC MONROE,
MONTE M. LEMANN,
Attorneys.

Hauser Printing Co., "The Legal Printers," 720 Poydras St., N. O., La.

United States Supreme Court.

OCTOBER TERM, 1914.

No. 146.

LEHMAN, STERN & COMPANY, LIMITED,
Plaintiff in Error,

versus

S. GUMBEL & COMPANY, LIMITED.

Comes now S. Gumbel & Company, Limited, by its counsel appearing in that behalf, and moves the Court to dismiss the writ of error in the above entitled and numbered cause for want of jurisdiction, because the writ of error herein is prosecuted from a judgment or decree of the Supreme Court of the State—to wit, the Supreme Court of Louisiana—and it does not appear that there was drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, or the validity of a statute of, or an authority exercised under any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; and it does not appear

that any title, right, privilege or immunity was especially set up or claimed by the plaintiff in error in the State Court under the Constitution or any treaty or statute of, or commission held or authority exercised under, the United States, or that the decision of the Supreme Court was against any such title, right, privilege, or immunity so especially set up or claimed by the plaintiff in error. The only Federal right set up or especially claimed in the State Court, or that could have been especially set up or claimed in the State Court in this case, was that which was set up and claimed by the defendant in error and granted and recognized by the State Court.

Wherefore, upon the authorities and for the reasons elaborated in the printed brief filed herewith, defendant in error moves the Court to dismiss the writ of error herein, for want of jurisdiction.

J. BLANC MONROE,
MONTE M. LEMANN,
Attorneys.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 146.

LEHMAN, STERN & COMPANY, LIMITED, PLAINTIFF IN ERROR,

versus

S. GUMBEL & COMPANY, LIMITED, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

SUPPLEMENTAL MEMORANDUM ON JURISDICTION OF THIS COURT IN REPLY TO BRIEF OF PLAINTIFF IN ERROR.

We believe the decision of the Supreme Court of Louisiana to be so clearly right on the merits that insistence upon the jurisdictional question here is not, as a practical proposition, essential. As a matter of professional interest, however, and because we would not have raised the jurisdictional point had we not thought it well founded, we desire to notice briefly the additional authorities on the question of jurisdiction

cited by plaintiff in error. A review of those authorities demonstrates that none of them is in point here.

In all of the cases cited, unlike the present case, the original cause of action in the State court was predicated entirely and alone upon a Federal statute, and the attempt was made to enforce against the plaintiff in error a liability under a Federal statute, from which liability he specially claimed (in the State court) immunity. In the case at bar, however, no attempt was made to enforce any liability upon the plaintiff in error. It set up in the State court no immunity from liability because no liability was asserted against it, and hence there was nothing for it to claim immunity from. Indeed, so far from any liability being asserted against plaintiff in error, making it necessary for it to claim an immunity, it was the plaintiff in error who was attempting to enforce a liability; and the liability it was attempting to enforce was based entirely upon a State statute and State remedial law. The defendant in error was the only party who had occasion to set up any immunity under a Federal law, and its claim was recognized, not denied.

These circumstances distinguish all the cases cited.

In *Illinois Central Railroad vs. McKendree,* 203 U. S., 514, the plaintiff below sought to hold the defendant liable under and upon the act of Congress of February 2, 1903, 33 Stat., 1264 (the Cattle Contagious Disease Act) and the defendant claimed immunity from liability thereunder,—thus specially claiming *in the State court* immunity from liability under a Federal statute, which immunity was denied it in the State court.

In *St. Louis Iron Mountain Ry. vs. Taylor,* 210 U. S., 281, the plaintiff below sought to hold the defendant liable under the act of March 2, 1893, 29 Stat., 531, and the defendant specially set up and pleaded in the State court immunity from liability under that Federal act, which immunity was denied it.

In *St. Louis, Iron Mountain & Southern Rwy. vs. McWhirter*, 229 U. S., 265, the plaintiff below sought to hold the defendant liable under the Hours of Service Act of 1907, and the defendant claimed immunity from liability under that act, which was denied it.

In *Eau Claire National Bank vs. Jackman*, 204 U. S., 522, the cause of action asserted by the plaintiff below was based directly upon the Bankruptcy Act, the suit being one by a trustee in bankruptcy to set aside a preferential transfer brought under section 60*b* of the act. The enforcement of the cause of action depended directly upon the Federal statute, and the defendant below resisted its enforcement and claimed immunity from the liability which was sought to be imposed upon it thereunder.

The rule which controlled the cases cited has been thus formulated:

> "A party who insists that a judgment cannot be rendered against him consistently with the statutes of the United States may be fairly held within the meaning of § 709 to assert a right and immunity under such statutes, although the statutes may not give the party himself a personal or affirmative right that could be enforced by direct suit against his adversary" (204 U. S., 532, quoting 200 U. S., 12).

The case at bar cannot be brought within this rule because no attempt was made to render a judgment or enforce a liability against the plaintiff in error, and the plaintiff in error did not set up any immunity from such judgment or liability, because it had no occasion to do so. Nor did it set up in the State court any right in itself under any Federal law. It relied in the State court throughout upon a State statute and State practice. The only Federal right or immunity set up was that claimed by the defendant in error, which was recognized and granted.

In *Acme Harvester Company vs. Beekman*, 222 U. S., 300, the State court had insisted upon its jurisdiction and

denied the claim specially made that the pendency of bankruptcy proceedings deprived it of jurisdiction. Of course a writ of error lay to review this finding; but in the present case the decision of the State court was just the other way: the State court held that it had no jurisdiction and recognized the claim set up by the defendant in error. The *Acme Harvester* case is precisely the converse of this case: it is what this case would be if the State court had decided against the contention of Gumbel & Co., Ltd., and if the writ of error here were being prosecuted by Gumbel & Co. instead of by Lehman, Stern & Co. But, as all the authorities cited in our original brief show, the fact that the court would have had jurisdiction to review a writ of error sued out by Gumbel & Co. if the immunity set up by it had been denied, by no means indicates that the court has jurisdiction when the decision of the State court was *in favor* of the immunity so set up. As we have heretofore said, the books are full of cases where the aid of this court has been invoked to prevent a State court from wrongfully taking jurisdiction (and the *Acme Harvester* case is one of such instances), but this is the first case, so far as we can find, where it has been suggested that this court has jurisdiction to compel a State court to take jurisdiction which it has held that it had not.

In *Graham vs. Gill*, 223 U. S., 643, the plaintiff in error originally set up in the State court, and relied throughout upon a Federal cause of action, a right under the homestead laws, which was denied him.

In *Straus vs. Am. Publishers' Ass'n*, 231 U. S., 222, the plaintiff went into court upon the Sherman Act, and his right to recover under that act was denied him. The jurisdiction of this court upon writ of error was plain.

In all of the cases cited by plaintiff in error in its supplemental brief the party suing out the writ of error to this court had specifically set up and pleaded *in the State court* a privilege or immunity under a Federal statute. No such

privilege or immunity was specifically set up in the State court in the case at bar by the plaintiff in error.

If this court has jurisdiction in this case, then it has jurisdiction in every case where a Federal right is set up by one party alone and the decision of the State court is *in favor* of that right, because in every such case the decision is necessarily against the contrary contention of the other party.

No such result can be reached without overruling all of the cases cited in our original brief at pages 12 to 31, which are indistinguishable. See particularly the decision in Kizer *vs.* Texarkana & Fort Smith Ry. Co., 179 U. S., 199, cited in our original brief at page 23, which is on all fours with this case. Additional cases to the same general effect might be multiplied almost endlessly (16 Peters, 149; 22 How., 194; 24 How., 20; 4 Wall., 603; 160 U. S., 288; 177 U. S., 523; 187 U. S., 587).

If such a result be sustained, the limitation established by the word *"against"* in R. S., 709, now Judicial Code, § 237, is wiped out and rendered meaningless, and the court has jurisdiction in every case irrespective of who sets up the Federal right and what the decision of the State court is. If this be the law, what occasion was there for Congress, less than one month ago, to amend § 237 of the Judicial Code so as to give this court the right to take jurisdiction by *certiorari* in cases where the decision of the State court was *in favor* of the Federal right?

See the act approved December 23, 1914, 63d Congress, No. 224 (S. 94):

> "An act to amend an act entitled 'An act to codify, revise, and amend the laws relating to the judiciary,' approved March third, nineteen hundred and eleven.
>
> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section two hundred and thirty-seven of chapter ten of an act entitled 'An act to

codify, revise, and amend the laws relating to the judiciary,' approved March third, nineteen hundred and eleven, is hereby amended by adding thereto the following:

"'It shall be competent for the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court, although the decision in such case may have been in favor of the validity of the treaty or statute or authority exercised under the United States or may have been against the validity of the State statute or authority claimed to be repugnant to the Constitution, treaties, or laws of the United States, or in favor of the title, right, privilege, or immunity claimed under the Constitution, treaty, statute, commission, or authority of the United States.'

"Approved, December 23, 1914."

If this court has jurisdiction by writ of error wherever the construction of a Federal statute is involved and wherever the decision below is *in favor of* the Federal right or immunity set up by only one party, what was the occasion for or object of this law? Why did the Bar Association advocate it and Congress pass it? And why did this court decide the *Kizer* case (179 U. S., 199) as it did?

Respectfully submitted,

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(27542)

United States Supreme Court.

OCTOBER TERM, 1914

No. 146

LEHMAN, STERN & COMPANY, LIMITED,
Plaintiff in Error,

versus

S. GUMBEL & COMPANY, LIMITED,
Defendant in Error.

Error to the Supreme Court of the State of Louisiana.

BRIEF FOR S. GUMBEL & COMPANY, LIMITED, DEFENDANT IN ERROR.

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INDEX.

TABLE OF CASES.

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STATEMENT OF CASE.

On **March 13, 1912,** Lehman, Stern & Company, Limited, a Louisiana corporation, filed suit in the Civil District Court for the Parish of Orleans against E. Martin & Company, a commercial firm, and the individual members there-

of, domiciled in the City of New Orleans, praying for citation of the partnership and partners and for a **personal** judgment against them in the sum of $19,238.53. This sum was alleged to be due the plaintiff as the purchase price of negotiable bills of lading for cotton in transit which the plaintiff had sold, indorsed and delivered to E. Martin & Company, and in payment for which plaintiffs had accepted checks of E. Martin & Company, which were dishonored by the banks on which they were drawn. The plaintiff claimed to be entitled to a vendor's lien on the bills of lading which it had thus sold and delivered, and the cotton represented thereby, said lien being asserted under a Louisiana statute applying to sales of spot cotton in the City of New Orleans (Act No. 63 of 1890). Under the provisions of the Louisiana Code of Practice, Articles 269 to 275, governing **sequestrations** (a remedy corresponding to the common-law writ of replevin), the plaintiff alleged that it feared that the cotton and the bills of lading issued therefor might be concealed, parted with and disposed of during the pendency of the suit, or sent out of the jurisdiction of the Court, and that it might thereby be deprived of its lien and privilege and recourse thereon. (Record, p. 3, second paragraph.)

Upon this showing plaintiff asked for a writ of **sequestration,** directing the Civil Sheriff for the Parish of Orleans to seize and sequester "the **above-described** cotton and the bills of lading issued therefor."

A writ of **sequestration** issued accordingly, **describing the particular bills of lading and cotton** upon which plaintiff claimed a lien. The writ commanded the Sheriff to

> "seize, sequester, take into your possession and safely hold, until the further order of this Court, **the**

> **following described property**—to wit: [Here describing **specifically** the particular bills of lading and cotton represented thereby upon which plaintiff claimed a lien]."

This writ was never executed by the Sheriff. He made no levy thereon and **none of the cotton or bills of lading described therein was taken by him into custody or possession.**

After setting out its claim of lien and its fear of loss thereof entitling it to a sequestration, the plaintiff went on in its petition to allege that the defendants had mortgaged, assigned and disposed of their property, rights and credits, or some part thereof, with intent to defraud plaintiff and their other creditors. This is the allegation required by Article 240 of the Louisiana Code of Practice, Section 4, for the obtaining of a writ of **attachment.** Plaintiff alleged that certain banks, railroads and individuals (including S. Gumbel & Company, Limited, the defendant in error here) were indebted to the defendants, E. Martin & Company, or had "property in their possession or under their control **belonging to the said defendants."** Plaintiff asked upon these allegations for a writ of **attachment** and prayed that upon this attachment the banks, railroads and other corporations named, including defendant in error, be made garnishees and ordered to answer interrogatories disclosing what, if any, property of the defendants they had in their possession or under their control.

Upon this allegation a writ of **attachment** also issued, directing the Sheriff

> "to seize and attach, according to law, and to take into your possession the goods and chattels, lands and

> tenements, rights and moneys, effects and credits of the said E. Martin & Company, composed of Eugene Martin, Sr., Eugene Martin, Jr., Gayarre Martin and Francis Martin, if any you find in said Parish, to the amount of what will suffice to discharge said debt and costs of suit" (Record, p. 7);

no particular property being, of course, described in the writ. Upon this writ of attachment garnishment process issued and interrogatories were directed to the corporations named in the petition, to be answered within ten days from the service thereof. No property was seized by the Sheriff or taken into possession by him.

On **March 20, 1912,** or seven days after the filing of the plaintiff in error's suit, the defendants in the suit, E. Martin & Company, and the individual members thereof, were adjudicated bankrupt. (Record, p. 24.)

On **March 25, 1912,** two of the garnishees, the Hibernia Bank & Trust Company and S. Gumbel & Company, Ltd., the defendant in error here, excepted to the interrogatories propounded to them under the garnishment issued upon the **attachment,** on the ground that the defendants in the original suit, E. Martin & Company and the individual members thereof, having been adjudicated bankrupt, the District Court had been deprived of jurisdiction to maintain the attachment upon which the garnishment had issued. (Record, p. 18.)

On **March 26, 1912,** one of the railroad companies which had been made garnishee, answered that it had in its possession certain cotton, bills of lading for which were in the hands of S. Gumbel & Company, Limited, who had presented the same and demanded surrender of the cotton; that the defendants in the suit, E. Martin & Company, had

been adjudicated bankrupts, and that the receiver in bankruptcy had notified the railroad company that, as the representative of the defendants and of the creditors of the firm, he claimed the right and ownership of the cotton, and had notified it that it should not surrender the same to anyone else. The company further averred that said cotton at the time of service of interrogatories upon it was not in its hands, but was in transit and not within the jurisdiction of the Court. (Record, pp. 19, 20.)

On **April 12, 1912,** the Receiver in Bankruptcy of E. Martin & Company intervened in the proceedings in the State Court and represented to the Court that the said proceedings in which E. Martin & Company were made party defendants, was commenced within four months preceding the filing of the petition in bankruptcy by said firm; that the said proceedings did not involve any property within the possession of the Court over which the Court could maintain jurisdiction during the bankruptcy of E. Martin & Company; and that the bankruptcy of said E. Martin & Company, since the institution of the suit had divested the Court of all jurisdiction in the matter. The Receiver prayed that the Court dismiss the proceedings, relegating the parties to the Court of Bankruptcy. (Record, p. 22.)

On **June 17, 1912,** the trial Judge overruled the exception filed by S. Gumbel & Company, Ltd., and the Hibernia Bank & Trust Company, to the jurisdiction of the Court to maintain the garnishment upon the attachment.

On **June 24, 1912,** S. Gumbel & Company, Ltd., applied to the Supreme Court of Louisiana for a writ of prohibition to restrain the trial judge from proceeding further with the garnishment proceedings, on the ground that the adjudication in bankruptcy of the defendants in those proceedings

within four months of its institution had annulled the attachment and the garnishment based thereon and deprived the Court of jurisdiction to proceed further therewith. This application, after reciting the facts as heretofore stated, set out that no property was in the physical possession or custody of the State Court; that a trustee in bankruptcy had been duly elected for the defendants, E. Martin & Company, and that the trustee had notified the relator (S. Gumbel & Company, Limited), that he claimed, and would claim, any property which there might be in its hands belonging to E. Martin & Company. The relator averred that the trustee in bankruptcy was thus claiming (as under the bankruptcy law he was entitled to claim) everything which the plaintiff in attachment proceedings in the Civil District Court could obtain by those proceedings; and that relator was thus threatened with conflicting claims in different courts.

On June 25, 1912, the Supreme Court of Louisiana issued an alternative writ of prohibition, to which in due course return was made by the trial Judge and plaintiff in error. On October 21, 1912, the Supreme Court of Louisiana rendered its opinion, holding that the State Court had no jurisdiction to enforce the garnishment process under the writ of attachment. The Court held that under the Louisiana practice no property had been brought by the writ of garnishment within the physical custody and control of the State Court. It was held that the proceeding could not be supported as to one to enforce a pre-existing lien because the writ of attachment and garnishment did not lie under the Louisiana practice to enforce liens or to recover specific property. The lien of the attachment itself was held to be the only lien before the Court and that was held dissolved by the provisions of Section 67-f of

the National Bankruptcy Act (Act of July 1, 1898, 30 Stat., at L., p. 544.) The writ of prohibition was accordingly made peremptory, prohibiting further proceeding upon the garnishment. Such lien as the plaintiff had independent of the attachment the Court specifically held not to have been affected or impaired by the bankruptcy act, but left open for assertion in other proceedings or in the Bankruptcy Court.

Plaintiff in error applied for a rehearing, which was granted; and the case again argued and taken under consideration by the Court. On March 3, 1913, the Supreme Court of Louisiana reaffirmed its former ruling. From the decree rendered upon this opinion the present writ of error has been prosecuted by the original plaintiff below, who is plaintiff in error here, against the garnishee, S. Gumbel & Company, Ltd., who is defendant in error here.

ARGUMENT.

We submit that the plaintiff in error is entitled to no relief from this Court because:

First: This Court has no jurisdiction to entertain the writ of error.

Second: The decision of the Supreme Court of Louisiana was right, resting ultimately upon questions of State law and State practice.

We take up these propositions in order.

I.

This Court Has No Jurisdiction.

This is a writ of error to the Supreme Court of a State. The jurisdiction of this Court is invoked under section 25 of the original Judiciary Act of 1789, afterward in-

corporated in R. S. 709, now Section 237 of the Judicial Code, and particularly under that provision thereof which gives the Supreme Court of the United States appellate jurisdiction

> "where any right, title, privilege or immunity is claimed under the Constitution or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is **against** the title, right, privilege or immunity **especially set up** or claimed by either party under such Constitution, treaty, statute, commission or authority * * *." (Black-letter ours.)

Under this provision and the repeated decisions applying and construing it in this Court, the plaintiff in error can prosecute a writ of error to this Court only by showing that **he "especially set up"** in the State Court a title, right, privilege or immunity under the Constitution or a statute of the United States, **and** that the decision of the State Court was **against** the title, right, privilege or immunity claimed—*i. e.*, the Federal right must be **especially** claimed **by the plaintiff in error** and must be **denied.**

In this case none of these essentials are present.

We submit that this Court has no jurisdiction because:—

1. The decision of the Supreme Court of Louisiana denied its own jurisdiction. As no **Federal** right existed to have the State Court take jurisdiction, its denial of its own jurisdiction constituted a denial of no Federal right.

2. The only Federal right set up in the State Court was that claimed by the defendant in error, and the decision of the Supreme Court of Louisiana was in favor of that

right. The mistaken **recognition** of a Federal right is no basis for jurisdiction in this court.

3. The plaintiff in error at no time set up in the State Court any Federal right in itself.

4. The attempt made in the petition for writ of error to this Court, and in the assignment of errors here, to present a Federal right claimed by the plainitff in error, even if well founded, would be ineffective because no such attempt or claim was made in the State Court itself.

5. Even if the points presented in the petition for writ of error and assignment of errors had been presented to the State Court, they did not indicate that any Federal right had been denied the plaintiff in error, whose sole complaint was that **too much Federal right** had been given the defendant in error.

Nothing in the Federal Bankruptcy Act or any other Federal law gave the plaintiff in error a right to proceed in enforcement of an alleged vendor's lien by process of garnishment upon an attachment. That was a question of remedy and procedure under the State law entirely, not protected or recognized by any Federal law, and controlled exclusively by the State Court whose decision upon State procedure, even if erroneous, is not subject to review in this Court. The decision of the Supreme Court of Louisiana related merely to the remedy for enforcing the lien claimed and not to the lien itself.

We take up these points for notice in order.

1. **No Federal right was denied to any one.**

The decision of the Supreme Court of Louisiana was to the effect that no property was in its physical possession or

control, and that it had no jurisdiction to maintain a garnishment proceeding upon an attachment against an insolvent defendant who was adjudicated bankrupt within six days after the filing of the petition. The Court decided that the lien of the attachment itself had been dissolved by the adjudication in bankruptcy under the bankruptcy act; that under the Louisiana practice and law, it could not maintain a garnishment proceeding to enforce a pre-existing lien because attachment or garnishment based thereon was not an appropriate process under the Louisiana law to recover specific property or to enforce pre-existing liens; and that it had no jurisdiction to proceed, in the face of an adjudication in bankruptcy, to pass upon claims against the bankrupts or their estate because no property was actually in the possession and control of the State Court.

The decision of the Supreme Court of Louisiana thus denied its own jurisdiction.

How can the State Court's denial of its own jurisdiction be a denial of a Federal right? Is there any Federal right to have a State Court take jurisdiction over a case of this character? What is there in the Constitution or statutes of the United States that requires a State Court to take jurisdiction of an attachment proceeding against an insolvent defendant within four months of bankruptcy to enforce a claim of pre-existing lien, if it elects not to do so?

There may be a Federal right in a case such as this to have the State Court recognize itself as without jurisdiction; but there is no provision in the Constitution or laws of the United States requiring the State Court to assert and maintain jurisdiction in itself for such a proceeding as plaintiff in error here attempted. The right to have an attachment

maintained in the State Court is a right arising under State law, if at all.

In this aspect, this case is quite without precedent. The books are full enough of cases where the State Court has insisted upon its own jurisdiction in contravention of a Federal right claimed, and this Court has been appealed to to prevent wrongful assertion of jurisdiction by the State Court and infringement by it upon Federal authority *(cf. Murphy vs. John Hoffman Company*, 211 U. S. 562); but this is the first case that has come under our observation where it has been suggested that Your Honors should **compel** the State Court to take jurisdiction which it has denied to itself—*i. e.*, force upon a State Court jurisdiction which it has declined to assert! The denial by the State Court of its own jurisdiction cannot be said, in any view, to constitute a denial of a Federal right unless some provision can be found in the Constitution or laws of the United States requiring a State Court to take jurisdiction over such a proceeding as this, and thus founding a Federal right to have such jurisdiction maintained. But no such provision, nor anything remotely resembling it, can be pointed out in any of the laws of the United States.

The decision of the Supreme Court of Louisiana denying its own jurisdiction was, therefore, in no sense a denial of a Federal right; and, accordingly, it cannot support a writ of error to this Court.

2. **The only Federal right set up in the State Court was that claimed by the defendant in error**; *i. e.*, the right to have the attachment and garnishment proceeding recognized as null and void under the Federal Bankruptcy law. The Supreme Court of Louisiana decided **in favor** of this right, set up by the defendant in error. Even if the State

Court was wrong in recognizing the Federal right thus claimed by the defendant in error, its decision in favor of that right is no basis for a writ of error to this Court, which has no jurisdiction in cases where the decision of the State Court is erroneously in favor of the Federal right claimed. This result follows from the plain provision of the original Judiciary Act now incorporated in Section 237 of the Judicial Code, providing for a writ of error only where the decision of the State Court is **against** the Federal right specially claimed. Where the decision of the State Court is **in favor** of the Federal right, even though erroneously so, this Court has no jurisdiction.

Missouri vs. Andriano, 138 U. S. 496, at page 496:

> "When the decision of a State Court is **in favor** of a right or privilege claimed under a statute of the United States, this Court has no jurisdiction to review it."

At Page 499:

> "Here is clearly a right or privilege claimed by respondent under a statute of the United States within the meaning of Rev. Stat., Sec. 709, and had the judgment of the Supreme Court of Missouri been adverse to this claim, there could be no doubt of his right to a writ of error from this Court to review its ruling. It is insisted, however, that the relator has no right to a review of the ruling in favor of respondent, as he claimed no right or privilege personal to himself or to his own status as a citizen, from such statute. The question thus presented is, whether the right or privilege must necessarily be personal to the plaintiff ir error, or whether he is not entitled to a review where such right or privilege is asserted by his opponent, and the decision is in favor of such op-

ponent and adverse to himself. While there is some force in the argument that the right of review in cases involving the construction of a Federal statute should be mutual, the act limits such right to cases where the State Court has decided **against** the title, right, privilege or immunity set up or claimed under the statute. (Black-letter ours.)

Fulton vs. M'Affee, 14 Curtis, 221:

"Under the 25th section of the Judiciary Act (1 Stats. at Large, 85), if the decision of the State Court was in favor of the title claimed by the plaintiff under an act of Congress, this Court has not jurisdiction, although proceedings and acts under another act of Congress were relied on to show fraud in the title of the plaintiff, and the State Court denied all such effect to these proceedings."

At Page 223:

"In order to give this Court jurisdiction under the 25th section of the Act of 1789, it is not sufficient that the construction of the Act of Congress, or the validity of the right claimed by M'Affee, was drawn in question and decided by the State Court. It must also appear that the decision was **against** the right claimed." (Black-letter ours.)

Gordon vs. Caldcleugh et al., 1 Curtis, 576:

"If a State Court decrees in favor of a right claimed under the Act of Congress, this Court has not jurisdiction under the 25th section of the Judiciary Act."

At page 577:

"In the present case, such of the defendants as were aliens, filed a petition to remove the cause to the Federal Circuit Court, under the 12th section of the

same act. The State Court granted the prayer of the petition, and ordered the cause to be removed; the decision, therefore, was not against the privilege claimed under the statute; and, therefore, this Court has no jurisdiction in the case."

Hale vs. Gaines, 3 Miller, 269, at page 272:

"It has been earnestly pressed on our consideration that the entry of Belden's heirs is also void, because the land it covers was not subject to entry by an occupant claimant, or any one else, after the act of April 20th, 1832, had reserved it from sale.

"Admitting it to be true, that the act of April, 1832, was passed when no individual claimant had a vested right to enter the land in dispute, still the 25th section of the Judiciary Act only gives jurisdiction to this Court in cases where the decision of the State Court draws in question the validity of an authority exercised under the United States, and the decision is **against** its validity. Here, however, the decision was in favor of the defendant's entry, and sustained the authority exercised by the department of public lands, in allowing Belding heirs to purchase."

Roosevelt vs. Meyer, 1 Wallace, 512:

"Where a certificate, coming up with the record from the highest court of law or equity of a State, certifies only that on the 'hearing' of a case a party 'relied upon' such and such provisions of the Constitution of the United States, 'insisting' that the effect was to render an act of Congress void, as unconstitutional, which said claim, the record went on to say, 'was overruled and disallowed by this Court,' and the record itself shows nothing except that the statute which it was argued contravened these provisions, was drawn in question, and that the decision

was in **favor** of the statute, and of the rights set up by the party relying on it; no writ of error lies from this Court to such highest State Court under the twenty-fifth section of the Judiciary Act of 1789."

Montgomery vs. Hernandez et als., 7 Curtis, 81 at Page 83:

"It has been insisted, for the plaintiff in error, that the question raised upon the record, whether Hernandez, not being a party to the marshal's bond given to the United States, could maintain a suit upon it in his name only, without suing in the name of the United States, for his use, is a question which can be re-examined in this Court. We are not of that opinion. **It is not every misconstruction of an Act of Congress by a State Court that will give this Court appellate jurisdiction.** It is where the party claims some title, right, privilege or exemption, under an Act of Congress, and the decision is **against** such right, title, privilege or exemption.

"In this case the plaintiff in error did not, and could not, claim any right, title, privilege, or exemption, by, or under the marshal's bond, or any Act of Congress giving authority to sue the obligators for a breach of the condition; or, at most, his claim to exemption rests upon form, and not substance, as the law expressly charges him, and the objection is only that the name of the United States should have been inserted for the use of the plaintiff.

"However, we might be inclined to the opinion that, regularly, and in point of form, the suit should have been in the name of the United States, for the use of Hernandez, we have no jurisdiction or authority to re-examine, and either reverse or affirm the decision of the State Court on that ground."

Murdock vs. City of Memphis, 20 Wallace, 590, at page 626:

> "Nor is the mere existence of such a question in the case sufficient to give jurisdiction—the question must have been **decided** in the State Court. Nor is it sufficient that such a question was raised and was decided. It must have been decided in a certain way, that is, against the right set up under the Constitution, laws, treaties, or authority of the United States. The Federal question may have been erroneously decided. **It may be quite apparent to this Court that a wrong construction has been given to the Federal law, but if the right claimed under it** by plaintiff in error **has been conceded** to him, **this Court cannot entertain jurisdiction of the case, so very careful is the statute, both of 1789 and of 1867, to narrow, to limit, and define the jurisdiction which this Court exercises** over the judgments of the State Courts." (Black-letter ours.)

The Commonwealth Bank of Kentucky vs. Thomas Griffith et als., 14 P. 343, at page 345:

> "The power given to the Supreme Court by this act of Congress was intended to protect the general Government in the free and uninterrupted exercise of the powers conferred on it by the Constitution, and to prevent any serious impediment from being thrown in its way while acting within the sphere of its legitimate authority. The right was therefore given to this Court to re-examine the judgments of the State courts, where the relative powers of the general and State government had been in controversy, and the decision had been in favor of the latter. It may have been apprehended that the judicial tribunals of the States would incline to the support of State authority, against that of the general Government, and might, moreover, in different

States, give different judgments upon the relative powers of the two Governments, so as to produce irregularity and disorder in the administration of the general Government. But when, as in the case before us, the State authority or State statute is decided to be unconstitutional and void in the State tribunal, it cannot, under that decision, come in collision with the authority of the general Government; and the right to re-examine it here is not necessary to protect this Government in the exercise of its rightful powers. In such a case, therefore, the writ of error is not given, and the one now before us must be dismissed for want of jurisdiction."

So in the instant case, the State authority to proceed was decided to be lacking in and by the State Court itself. This decision

> "cannot come in conflict with the authority of the general Government, and the right to re-examine it here is not necessary to protect this Government in the exercise of its rightful powers. In such a case the writ of error is not given, and the case now before us must be dismissed for want of jurisdiction."

Lynde vs. Lynde, 181 U. S. 183, at page 186:

> "The husband, as the record shows, having appeared generally in answer to the petition for alimony in the Court of Chancery in New Jersey, the decree of that Court for alimony was binding upon him. (*Laing vs. Rigney,* 160 U. S. 531.) The Court of New York having so ruled, thereby deciding in favor of the full faith and credit claimed for that decree under the Constitution and laws of the United States, its judgment on that question cannot be reviewed by this Court on writ of error. (*Gordon vs. Caldcleugh,* 3 Cranch. 268; *Missouri vs. Andriano,* 138 U. S. 496.)"

3. **The plaintiff in error at no time set up in the State Court any Federal right.**

Under the Judiciary Act, now Judicial Code, Sec. 237, the Federal right the denial of which is made the basis of jurisdiction here, must have been **"especially set up** or claimed" in the State Court by the plaintiff in error. An examination of the record here will show that in its original petition, the plaintiff in error relied entirely upon its claims, under the State law, to a personal judgment against the original defendants, E. Martin & Company, to a writ of attachment against **all** of their goods, chattels and property, and to a writ of sequestration to enforce an alleged vendor's lien under the Louisiana statutes. The Federal right was set up only by the garnishees and by the Receiver in Bankruptcy of E. Martin & Company, who intervened in the proceedings. Upon the application to the Supreme Court of Louisiana for a writ of prohibition, the plaintiff in error made a return for itself and for the Judge of the District Court, in which no Federal right was set up or claimed. In its application to the Supreme Court of Louisiana for a rehearing, the plaintiff in error itself set up no Federal right. Plaintiff in error contended that the Federal right claimed by the defendant in error was not well founded; but plaintiff in error set up no Federal right in itself. The claim of plaintiff in error was entirely based upon its alleged vendor's lien under the local statute of Louisiana, and upon the "right" which it asserted under Louisiana practice to maintain an attachment proceeding in enforcement of the alleged lien. Plaintiff in error was resisting the Federal right asserted by the defendant in error, but it, at no time, in the State Court asserted any Federal right in itself. Plaintiff came into Court

with a claim based upon State statute and State procedural law alone, and relied upon that claim, alone, throughout.

4. **The attempt made in the petition for writ of error and in the assignment of errors to this Court to present a Federal right claimed by plaintiff in error, even if otherwise well founded, is ineffective because too late.**

It is elementary that the Federal right must be specially claimed in the State Court. It is too late to set it up for the first time in the petition for a writ of error to the Supreme Court of the United States. *Johnson vs. New York Life Ins. Company*, 187 U. S. 491, 495; *Telluride etc. Company vs. Rio Grande etc. Company*, 187 U. S. 569; *Dakota etc. Railroad Company vs. Crouch*, 203 U. S. 582. But it was not until its petition for a writ of error to this Court that the plaintiff in error made even the pretense that it was relying upon any Federal right. The attempt then put forth to make out a Federal right in the plaintiff in error was specious only, as we shall hereafter show; but even if it could be supported as sufficiently presenting a Federal right in the plaintiff in error, it came too late. While the case was pending in the State Court, there was at no time any suggestion to that Court that the plaintiff itself relied upon any Federal right. The plaintiff in error, on the contrary, at all times relied upon its alleged right to a vendor's lien under the laws of Louisiana and to the use of attachment process under the Louisiana law to enforce that lien. The plaintiff in error never claimed any right in itself under any Federal law in the State Court; it was simply resisting the Federal right set up by the defendant in error.

5. **Even the petition for writ of error to this Court and the assignment of errors here do not indicate any de-**

nial of Federal right to plaintiff in error, whose sole complaint was that too much Federal right had been given defendant in error.

In the petition for a writ of error to this Court, and in its assignment of error to this Court, the plaintiff in error for the first time attempted, by the ingenious use of language, to make a showing that it set up a Federal right in itself. In the petition for a writ of error to this Court (Record, p. 46) the plaintiff in error alleged:

> "That this Court (*i. e.*, the Supreme Court of Louisiana) decided **in favor** of the claim of immunity made by **applicant** (S. Gumbel & Company, Limited), and denied the right claimed by petitioner (Lehman, Stern & Company, Limited), under said National Bankruptcy Act, to proceed with the trial of their suit against Martin & Company in the Civil District Court, Parish of Orleans, State of Louisiana; and with the enforcement of their statutory vendor's lien by means of their writ of attachment, and the garnishment proceedings thereunder, taken out by them in aid of and to enforce said vendor's lien, the jurisdiction of the Civil District Court at the time suit was filed, and the attachment and garnishment taken out and executed being conceded, and **the sole claim being** that such lawful and conceded jurisdiction was **taken away** by virtue, **solely,** of the provisions of the National Bankruptcy Act of 1898, and particularly by subdivision "F" of Section 67 thereof, which annulled and avoided all writs of attachment taken out within four months of bankruptcy." (Black-letter ours.) (Record, p. 46.)

It will be noted that even here the only Federal right claimed is a right in Lehman, Stern & Company, Limited, under the National Bankruptcy Act, to proceed with the

trial of their suit against Martin & Company in the Civil District Court for the Parish of Orleans, and with the enforcement of their statutory vendor's lien by means of an attachment and garnishment proceeding.

But where is there anything in the National Bankruptcy Act which gives the petitioner the right to proceed with the trial of a suit in a State Court, to enforce a lien under a State statute, by the State process of attachment and garnishment?

The most that could have been claimed was that there was nothing in the National Bankruptcy Act to deprive the petitioner of the right to proceed in the State Court with an attachment. Even that would not have been correct, as we shall hereafter show; but certainly, in no event, is there anything in the National Bankruptcy Act which **affirmatively gives the right** to proceed in the State Court upon the State staute by attachment in the manner above set out.

It will be further observed that in the paragraph quoted from the petition for a writ of error, the plaintiff in error went on to say that the **sole claim** was that the jurisdiction of the State Court was **taken away** by the National Bankruptcy Act.

Upon its own allegation, the plaintiff in error thus showed that the **sole** contention made in the State Court was the contention of the **defendant in error** that the right to proceed in the State Court had been **taken away.** The plaintiff in error thus concedes by its own declaration that no contention was ever made in the State Court that the right to proceed had been granted or conferred by the National Bankruptcy Act.

The attempt, therefore, by the plaintiff in error to make out a denial of Federal right to itself, was not effectively presented, even in the petition for a writ of error to this Court. The assignment of errors to this Court is not more persuasive in making out a denial of Federal right to the plaintiff in error. It is there set out that the Supreme Court of Louisiana erred in holding the attachment proceedings null, and that in "thus deciding, that Court decided against the contrary contention of Lehman, Stern & Company, Limited, and the right, privilege and immunity thus specially set up and claimed." (Record, p. 94.) The contention is thus made that a Federal right is denied by plaintiff in error, whenever the State Court erroneously recognizes a Federal right, set up by the adverse party; in other words, that whenever a Federal right is set up by one party to a litigation, and is resisted by the other party, who himself sets up no independent Federal right, the resisting party has a right to have the Federal law so construed as to deny the right claimed by the party setting it up.

If this contention be well founded, then the language of Section 25 of the original Judiciary Act of 1789, preserved in Section 237 of the Judicial Code, is meaningless. The word **"against"** appearing in that section is stricken out of the statute, and the jurisdiction of this Court will extend to all cases in which a Federal right has been **granted** by the State Court. Your Honors have heretofore expressly declined to sanction any such result.

De Lamar's Nevada Gold Mining Company vs. Nesbitt, 177 U. S. 523 at Page 528:

> "There was undoubtedly a Federal question raised in the case, but it was raised by the plaintiff

> Nesbitt, who based his right to recover upon the Acts of Congress of November 3, 1893, and July 18, 1894, suspending the forfeiture of mining claims for failure to do the required amount of work. The decision of the Court, however, was in favor of, not against, the right claimed under the statute, and of this construction the plaintiff in error is in no position to take advantage, as it made no claim under those statutes."

So here, the plaintiff in error is in no position to complain of any error made in the construction of the bankruptcy statute, as it made no claim thereunder. Plaintiff's claim of lien was based entirely upon the State law, and at no time in its pleadings in the State Court did it set up or claim any right under the Bankruptcy Act or other Federal law.

The contention of plaintiff in error has moreover been squarely decided against it in a case which, upon the jurisdictional point, is indistinguishable from the present case.

Kizer vs. Texarkana & Fort Smith Ry. Company, 179 U. S. 199:

> "The plaintiff in error commenced an action against the defendant in error in a Circuit Court of the State of Arkansas to recover damages for the breach of an alleged contract between the parties, by which the railroad company agreed to furnish cars and to transport over its road and into points in the State of Texas, certain lumber for the plaintiff in error from his sawmill in Rankin, in Little River County, in the State of Arkansas, at a certain rate of compensation, and it was alleged in the plaintiff's complaint that the defendant had violated that contract by charging a greater sum for the transportation of such lumber than had been agreed upon,

and the plaintiff sought to recover from the defendant in error the excess paid by the plaintiff over the contract price.

"Several defences were put in by the defendant, and among others it set up that the contract was illegal, because the transportation of lumber from Rankin, in the State of Arkansas, to places in the State of Texas over the defendant's road was interstate commerce, and the contract therefore violated Sections 1, 2 and 3 of the Interstate Commerce Act, Act of February 4, 1887, c. 104, 24 Stat. 379, in that it made a discrimination in favor of the plaintiff.

"The trial court held that the contract did violate that act, and was, therefore, void, and could not be enforced or damages recovered for its breach.

"Plaintiff in error then appealed to the Supreme Court of Arkansas, where the judgment was affirmed, the Court saying, in its opinion, that 'the facts in this case, as found by the Court, as set out in the statement of facts, show that the contract upon which the appellant relies is within the prohibitions of Sections 1, 2 and 3 of the interstate commerce law, enacted by Congress * * * * We think the contract relied on in this case is prohibited by the Act of Congress to regulate Commerce, and is void.'

"Upon the affirmance of the judgment by the Supreme Court of Arkansas, the plaintiff brought the case here by writ of error.

"He now says that, although he set up no claim of any title, right, privilege or immunity under the Act of Congress, yet the claim which defendant specially set up under it was acknowledged and enforced by the State Court, and the statute was thus construed unfavorably as to him, and that he has, therefore, a right to have the judgment of the State

Court, which was based on such construction, reviewed here under Section 709 of the Revised Statutes of the United States. But that section provides, so far as here applicable, that when any title, right, privilege or immunity is claimed under a statute of the United States, and the decision of the State Court is against the title, right, etc., specially set up or claimed under such statute, then and in such case the judgment of the State Court may be reviewed by this Court.

"Here, the claim under the Federal statute has been allowed by the State Court, and the contract sued on by the plaintiff in error has been denied validity because of its violation of that statute. It is not every case where a Federal statute has been construed by a State Court that gives a right of review to this Court, but the claim of any right, title, privilege or immunity under the statute must have been denied by the State tribunal in order to give us jurisdiction to review its judgment. **That a Federal statute was construed unfavorably to one of the parties to the suit is no ground for jurisdiction by this Court, unless such construction was not only unfavorable, but was against the right, etc., specially set up and claimed under the statute.** In that case the party setting up and claiming the right under the statute, which has been denied, can obtain a review here. **Thus it might happen, as it has happened in this case, that, while the decision upon the construction of the statute was unfavorable to the maintenance of the cause of action set forth by the plaintiff in error, it was not against, but in favor of, the claim made under the Federal statute.** The question whether that statute, properly construed, prohibited the making of such an agreement as that set up in the complaint in the State Court, having been decided in favor of the

> claim set up by defendant under the statute, this Court has no jurisdiction to review the judgment. *(De Lamar's Gold Miniing Company vs. Nesbitt,* 177 U. S. 523, 5281, and cases there cited; *Missouri vs. Andriano,* 138 U. S. 496.)"

This case is almost word for word applicable here; the sole difference is that in the case cited the defendant in error relied upon the Interstate Commerce Act to defeat the action of the plaintiff, while here the defendant relied upon the Bankruptcy Act. The difference is obviously immaterial. Adapting substantially the identical language of the case quoted:

> "That a Federal statute was construed unfavorably to one of the parties to the suit is no ground for jurisdiction by this Court, unless such construction was not only unfavorable, but was against the right, etc., specially set up and claimed under the statute. In that case, the party setting up and claiming the right under the statute, which has been denied, can obtain a review here. **Thus it might happen, as it has happened in this case, that while the decision upon the construction of the statute was unfavorable to the maintenance of the cause of action set forth by the plaintiff in error, it was not against, but in favor of, the claim made under the Federal statute.** The question whether that statute, properly construed, prohibited the State Court from proceeding with the attachment and garnishment, having been decided in favor of the claim set up by defendant under the statute, this Court has no jurisdiction to review the judgment."

Yet, notwithstanding these authorities, in its sixth assignment of error, the plaintiff in error specifi-

cally claims that this Court has jurisdiction upon appeal in all cases involving the interpretation of the provisions of the Federal Statutes, even though the decision of the State Court recognized the Federal right claimed and was in favor of it.

However desirable it might be to establish such jurisdiction in this Court, the fact remains that Congress has not so far seen fit to establish it. If the English language means anything, the jurisdiction of this Court under Section 237, Judicial Code, must be confined to cases where the decision of the State Court is **against** the Federal right. This Court's appreciation of the plain effect of this section is indicated by its decisions hereinabove quoted. The profession has always had the same understanding of the law. Some years ago a committee of the American Bar Association suggested an amendment of the Judiciary Act so as to confer upon the Supreme Court appellate jurisdiction in all cases involving the interpretation of Federal laws, whatever the character of the decision of the State Court. (See Proceedings American Bar Association, 1911, 462, 469, 482.) Such an amendment would confer upon the Supreme Court jurisdiction in a case of this character. The argument of the plaintiff in error, if sound, leads to the conclusion that no such amendment is necessary, and that this Court has had such jurisdiction substantially since 1789 (since the word "against" has been in the Judiciary Act ever since its original promulgation). If this position be well taken, then the eminent lawyers composing the Committee of the American Bar Association stultified themselves when they proposed an amendment which was unnecessary and meaningless; and this Court has committed egregious error in the decisions which we have noted

above. Without overruling those cases, and without reading the word "against" out of the Judiciary Code, it is impossible to see how the position taken by the sixth assignment of error can be sustained.

The only independent claim of Federal right anywhere suggested by the plaintiff in error appears in the suggestion that the Bankruptcy Act expressly recognized and maintained all statutory and all valid liens. Presumably this suggestion refers to the negative provision in the Bankruptcy Act, that nothing therein shall affect liens given or accepted in good faith. No right under this negative provision was set up or claimed by the plaintiff in error before the State Court, as we have heretofore pointed out, and that circumstance alone is sufficient to dispose of the point made in the assignment of errors. Beyond that, however, there are two reasons, each complete in itself, why this suggestion does not strengthen the position of the plaintiff in error.

(*a*) In the first place, the provision of the Bankruptcy Act is negative purely and does not actively confer any right.

Menard vs. Aspasia, 9 Curtis 446, at Page 451:

> "The right asserted by the plaintiff in error had not its origin under any express provision of the ordinance. It is only contended that that instrument did not destroy this right, which had its commencement in other laws and compacts. A sanction of the right, implied more from the force of construction than the words used in the ordinance, is all that can be urged."

And at Page 452:

> "His title does not arise under an Act of Congress. This is essential to give jurisdiction under this head. It is not enough to give jurisdiction, that the Act of Congress did not take away a right which previously existed. Such an act cannot be said to give the right, though it may not destroy it."

This language is directly applicable here. The right or lien asserted by the plaintiff in error had not its origin under any express provision of the Bankruptcy Act. It was based upon the Louisiana statute and upon it alone. The Bankruptcy Act cannot be said to give plaintiff in error the right to enforce his alleged lien by attachment even though it did not destroy it.

(*b*) In the second place, the rights negatively saved by the Bankruptcy Act, are liens given or accepted in good faith. The only right which the plaintiff in error upon any construction could have asserted under this provision of the Bankruptcy Act would be a right to have its alleged vendor's lien not declared invalid. But the Supreme Court of Louisiana did not deny the plaintiff in error any right upon this basis, because it did not deny plaintiff's vendor's lien, or declare it invalid. On the contrary, the **Supreme Court of Louisiana specifically recognized that if plaintiff in error had any vendor's lien, it was not affected or impaired by the Bankruptcy Act.** (Black-letter ours.)

See the decision of the Supreme Court of Louisiana upon rehearing (Record page 42, paragraph 1 of opinion, 132 La., 231, 236).

> "Breaux, C. J.: The Bankruptcy Act is not destructive of rights already existing at the time

> the writ of attachment issued. It gives effect to all liens except those growing out of the attachment itself. We will not discuss any proposition save that the writ of garnishment does not hold the property, nor does it issue to compel the delivery of a specific thing."

Here is a specific recognition by the Supreme Court of Louisiana of the reservation by the Bankruptcy Act of valid pre-existing liens. In the light of this explicit statement, how can it be for a moment contended that the Supreme Court of Louisiana decided that any lien given or accepted in good faith was affected by the Bankruptcy Act, and denied a Federal right by so deciding?

The Supreme Court of Louisiana, as thus appears, did not deny the plaintiff in error its alleged lien. All that that Court decided was that such lien as the plaintiff in error might have had could not be enforced by the process of garnishment upon attachment; that the attachment proceeding must, therefore, be treated just as any ordinary attachment proceeding would be where no question of pre-existing lien was even suggested, since no such question could arise upon the use of attachment process; that the operation of a writ of garnishment under the Louisiana practice did not bring any specific property within the physical custody or possession of the State Court, and that such lien as plaintiff had should be asserted in other proceedings (Record P. 42, middle of page.)

These are all questions of State law and State practice, over which this Court has no jurisdiction. Neither the National Bankruptcy Act nor any other Federal law guarantees or recognizes any right of a litigant to use the process of garnishment upon attachment to enforce a pre-existing lien.

The negative proviso as to liens in the Bankruptcy Act refers to substantive rights only, not to remedies. *In re Utt.*, 105 Fed. 754; *In re Harralson*, 179 Fed. 490; *In re Williams*, 156 Fed. 939; *In re Zehner*, 193 Fed. 787, at 790. When the Supreme Court of Louisiana denied to plaintiff in error the right to enforce its pre-existing lien by a process of attachment, it denied him **not a right at all, but a remedy,** and the remedy which it denied him was a remedy dependent upon State law and State practice, its decision as to which is conclusive in this Court.

See *Cramer vs. Wilson*, 195 U. S. 410; *Thompson vs. Fairbanks*, 196 U. S 516; *Long Island Water Supply Company vs Brooklyn*, 166 U. S. 685; *Finney vs. Guy*, 189 U. S. 335; *In re Wabash Railroad Company vs. Adelbert College*, 208 U. S., where, at 611, the Court said:

> "The ascertainment of the amount due the plaintiffs in the issue of an execution against the Toledo, Wabash & Western Railroad Company may be regarded as independent of the proceedings for the enforcement of the lien. Whether such a judgment can be rendered upon a proceeding of this nature (*Giddings vs. Barney*, 31 Ohio State 80) is a question exclusively for the State Court."

We conclude here our discussion of the jurisdictional question. When the State Court denied its own jurisdiction, it denied no Federal right to any one because no Federal right existed to have it take jurisdiction. The only Federal right relied upon was that set up by the defendant in error, and the decision of the State Court was **in favor** of that right. That decision, even if erroneous, would not found

jurisdiction here. Plaintiff in error relies throughout upon a State statute and the State laws governing remedies. His alleged lien was not denied by the State Court, but was specifically reserved. The decision of the State Court rested finally upon its ruling as to its own local practice, and the purpose and effect of writs of garnishment and attachment in Louisiana, which are not Federal points and not subject to review in this court.

We submit that for each and all of these reasons the writ of error should be dismissed.

Coming now to the merits of the case:

II.

ON THE MERITS.

The decision of the Supreme Court of Louisiana was right, resting in the last analysis upon State law and practice.

1. The attachment and garnishment based thereon was properly held dissolved, under Section 67f of the bankruptcy act, by the adjudication of the defendants in bankruptcy within six days, and the State Court rightly held itself without jurisdiction to proceed with the attachment thus annulled. The proceeding cannot be saved as one to enforce a pre-existing lien, because no question of pre-existing lien can arise on attachment and garnishment process, which are not appropriate remedies under Louisiana practice (or elsewhere) for the enforcement of pre-existing liens.

B. The decision of the Supreme Court was right, even independently of the provisions of Sec. 67f of the bankruptcy act, on the general principle that after the filing of a petition in bankruptcy a State Court has no jurisdiction to proceed with claims against the bankrupt or his property, except possibly in cases in which the State Court is already in possession of some of that property under appropriate process. That exception does not exist here, because the State Court (according to its own finding) was not in possession of any property.

C. The decision of the Supreme Court of Louisiana thus rested ultimately upon two points of State practice—the impossibility of enforcing a pre-existing lien by attachment or garnishment process; and the failure of garnishment process to bring any property within the possession and custody of the Court.

Taking up these points again in order:

A. Upon the merits, this case presents the narrow question whether garnishment proceedings in a State Court of Louisiana upon an attachment issued against an insolvent defendant within six days of his adjudication in bankruptcy can be supported.

Section 67f of the National Bankruptcy Act of 1898 provides:

> "All levies, judgments, **attachments** or other liens obtained through legal proceedings against a person who is insolvent at any time within four months prior to the filing of the petition in bankruptcy against him, shall be deemed **null and void,** in case he is adjudged a bankrupt, **and the property affected by the** levy, judgment, **attachment** or other liens, **shall be deemed wholly discharged and released from the same."** (Black-letter ours.)

State Courts as well as Federal Courts applying the rule thus announced have uniformly held that a garnishment based upon an attachment sued out against an insolvent defendant within four months of an adjudication in bankruptcy is stricken with absolute nullity and cannot be maintained.

See **Wooldridge, Assignee, vs. F. Rickert & Co.,** and **Waggaman vs. Sheriff,** 33 La. 234.

> **"The adjudication in bankruptcy dissolves attachments of the bankrupt's property taken within four months."**

See, also, **Wright, Dalton, etc., Company vs. Sanders,** 125 S. W. 517 (Missouri Court of Appeals, February, 1910):

> "The adjudication of the principal debtor to be bankrupt, effectually assigns and transfers by operation of the Bankruptcy Act all of his assets and choses in action, including the indebtedness of the garnishee, to the assignee in bankruptcy, to be held as trustee for all the creditors and to be administered by the Federal Court. **Hence, at the time of the service of the writ of garnishment—it being within four months prior to the adjudication of bankruptcy—the garnishee is not indebted to the bankrupt but to the trustee in bankruptcy;** and, consequently, no legal judgment can be rendered against the garnishee in a State Court. A judgment rendered against the garnishee, and all subsequent proceedings by virtue of the Bankruptcy Act are *coram non judice.*"

Cavanaugh vs. Fenley, 94 Minn. 505 (110 Am. St. Rep. 382):

> "A garnishment of money belonging to an insolvent within four months of the time he is adjudged a bankrupt is dissolved and rendered void by the

bankruptcy proceedings, although the insolvent made no reference in his schedule of assets to the fact that the indebtedness had been garnished."

Page 385:

"**The garnishment proceedings were, as a matter of law, rendered null and void** by the judgment of the United States Court adjudging defendant a bankrupt, and the effect and operation of the law was not changed by the failure of the defendant, in his schedule of assets, to disclose the fact that the indebtedness had been garnished."

Armour Packing Co. vs. Wynn, 119 Ga. 683, at 685:

"The garnishee, having notice of the adjudication in bankruptcy, not only had the right to set up his non-liability to the garnishing plaintiff, but if he had failed to make such defence, and had been subsequently sued by the trustee of Haralson, the judgment awarding the bankrupt's money in the hands of Armour Packing Company to Wynn would have afforded no defence. *Smith v. Johnson,* 71 Ga. 748 (3); *Lamar v. Chisolm,* 77 Ga. 306; *Rutherford v. Fullerton,* 89 Ga. 352; *In re Beale,* 116 Fed. 530. The garnishee was therefore performing a duty imposed by law when it pleaded the bankruptcy, not only as to the $36 in which the trustee might have been interested, but also as to the $72 earned by Haralson after the adjudication."

See, also, *Nugent, Assignee, vs. Opdyke,* 9 Rob. 453; *Randell & Co. vs. McLain,* 40 Ga. 162; *Howe vs. Union Insurance Co.,* 42 Cal. 528; *Kellog-McKay-Cameron Co. vs. Schmidt Baking Co.,* 101 Ill. App. 209; *Longley vs. McCann,* 90 Ark. 252 (119 S. W. 268); *Janes vs. Beach,* 1 Mich. *nisi-prius,* 94.

In the last-mentioned case the principal defendant within four months after the service of the writ of garnishment was declared a bankrupt on his own petition. *Held*, that the appointment of an assignee should be presumed. *Held, also*, that such bankruptcy dissolved the power of garnishment.

The Court said at page 95:

> "The proceedings in bankruptcy dissolve the attachment in favor of the representative of the estate by force of the act of Congress. No intervention by him in that suit is essential to that result. When it takes place the fund falls back into the bankrupt estate and would be unaffected by judgment between a bankrupt and a third person assuming to direct it."

A long line of authorities in the Federal Courts likewise demonstrates the nullity of the garnishment process attempted under the circumstances here presented.

See **In re Tune,** 115 Fed. 906 (at 907):

> "When the only right of possession by a State Court of attached property is based on an **attachment** lien, which is annulled by the adjudication in bankruptcy, **the State Court loses all jurisdiction of the rem,** which is transferred into the exclusive jurisdiction of the Court of Bankruptcy. There is no longer any right of possession in the officer of the State Court, who then holds as bailee for the person rightfully entitled to possession, and becomes a trespasser if he fails to deliver on proper demand.

At page 914:

> **"Subdivision f, Sec. 67,** of the bankruptcy law, declares that 'all levies, judgments, atachments or other liens obtained by legal proceedings against a

person who is insolvent, at any time within four months prior to the filing of the petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt; and the property affected by the levy, judgment, attachment, or other lien, shall be deemed wholly discharged and released from the same, and shall pass to the trustees as a part of the estate of the bankrupt.' This provision applies alike to voluntary and involuntary petitions. Of the constitutionality of this statute there can be no doubt for it is passed in pursuance of a grant in the constitution, which authorizes Congress to confer upon the courts of the United States exclusive jurisdiction of matters in bankruptcy. If this section is constitutional, there would seem to be no doubt that the State court, in which such an attachment was begun, lost all right to the custody of the property; for by operation of the supreme law the custody was divested out of that court, and invested in the trustee. **The cable which kept property in the grasp of the jurisdiction of the State court parted when the law annulled the levy.** The levy could no longer affect the property. The adjudication vacated it. Subdivision "f" quashed it, and the property 'affected' by it was 'wholly released and discharged' from its power. **How is it possible in such a case for a Court to have jurisdiction and rightful possession over the rem, when against the only proceeding which could confer a right to possession the law itself pronounces an inexorable sentence of nullity, and at the same time stripped the Court of jurisdiction to make any further order?** * * *"

In re Beale, 116 Fed. 530:

"Under Bankruptcy Act of 1898, Sec. 67f, an adjudication in bankruptcy, whether in voluntary or involuntary proceedings, renders void a judg-

ment against a garnishee rendered in an action brought against the bankrupt within four months prior to the filing of the petition, and when he was insolvent, and discharges the garnishee from liability thereon, and such judgment must thereafter be treated as a nullity whenever drawn in question, whether directly or collaterally."

The Court said, at page 533:—

"In obedience to the positive mandate of the statute, the Court must deem the attachment null and void. It must be treated as a nullity whenever and wherever drawn in question, either in a direct or in a collateral poceeding."

In re Bransford, 194 Fed. 658:

"Under Bankruptcy Act, July 1, 1898, c. 541, par. 67f, 30 Stat. 565 (U. S. Comp. St. 1901, p. 3450), which provides that all levies, judgments, attachments or other liens, obtained through legal proceedings against an insolvent within four months of the filing of a petition in bankruptcy, shall be void in case he is adjudged a bankrupt, a lien acquired by a judgment against a bank, as garnishee, for the amount of funds which the principal defendant had on deposit, was voided by the institution within four months of bankruptcy proceedings against him, and the property passed to his trustee.

"The District Court has jurisdiction to enjoin in a summary proceeding the collection of a garnishee judgment; the principal defendant having been adjudicated a bankrupt within four months."

Klipstein & Co. vs. Allen-Miles Co., 136 Fed. 386 (at 391):

> "The condition of the bond dissolving the garnishment is for the payment of the judgment that shall be rendered on the garnishment proceedings. This must be taken to mean for the payment of such a judgment as could have been rendered against the garnishee if the bond had not been given. (*Guilford vs. Reeves,* 103 Ala. 301, 15 South. 661; *Collins vs. Baldwin,* 109 Ala. 402, 19 South. 862.) No judgment could have been rendered against the garnishee on the garnishment proceedings if the bond had not been given, because **such poceedings were invalidated by the adjudication in bankruptcy.** (*In re McCartney* (D. C.), 109 Fed. 621."

In re McCartney, 109 Fed. 621:

> "Under the Bankruptcy Act of 1898, Section 67f, providing that all attachments or other liens obtained through legal proceedings against a person who is insolvent within four months prior to the filing of a petition in bankruptcy against him shall be deemed void in case he is adjudged a bankrupt, **a garnishment made within four months of the insolvent defendant being adjudged a bankrupt on his own petition is released, since such statute applies as well to voluntary as to involuntary proceedings."**
>
> See, also, *In re Lesser,* 108 Fed. 201; *In re Forbes,* 186 Fed. 79; *In re Monroe Lumber Lumber Co.,* 186 Fed. 252.

In the face of the authorities thus collected, plaintiff in error cannot deny that as a general proposition a garnishment upon an attachment issued against an insolvent defendant within six days of an adjudication in bankruptcy

is annulled and avoided by the adjudication in bankruptcy, and that the State Court loses jurisdiction to proceed with it. Plaintiff in error attempts, however, to take the present case out of this general rule upon the ground that its action was one to enforce a pre-existing lien, relying upon the language employed by this Court in *Metcalf vs. Barker*, 187 U. S. 175, where the Court said, referring to Section 67f of the bankruptcy statute:

> "A judgment or decree in enforcement of otherwise valid pre-existing liens is not the judgment denounced by the statute, which is plainly confined to judgments creating liens."

Adapting this language to this case, plaintiff in error claims that under Section 67f of the bankruptcy act the attachment itself was not dissolved, but only the lien of the attachment, and that it is claiming in this case to use the attachment, not for the purpose of benefiting by the attachment lien, but only to enforce a valid pre-existing vendor's lien.

Our answer to this contention is that, **under the Louisiana practice, there is no such thing as attachment or garnishment to enforce a pre-existing lien.** By attachment and garnishment plaintiff did not reach, and could not reach, any specific property, **as would be necessary to enforce a pre-existing lien thereon.** This the Louisiana Supreme Court decided in this very case, as it had already decided in earlier cases. See opinion, Louisiana Supreme Court on rehearing (Rec., p. 42):

> "We will not discuss any proposition save that the writ of garnishment does not hold the property, nor does it issue to compel the delivery of a specific thing."

Even if the decision of the Louisiana Supreme Court on this question of Louisiana practice were wrong, it would be final here, and not subject to review by this Court. But the decision of the Louisiana Supreme Court was not wrong. The same proposition had been declared in Louisiana in a very early case.

See **Hanna's Syndics vs. Loring,** 11 Martin, 276:

> **"An attachment does not lie to compel the delivery of a specific thing."**

The decision in this case was pronounced by the famous Court of which Judges Porter and Martin were members.

Porter, J., delivered the opinion of the Court in the following language:

> "This suit was commenced by attachment to recover certain notes delivered by Hanna to the garnishees, agents for Loring, defendant. It is the opinion of the Court that the plaintiffs have misconceived their remedy. **Attachment is not given by our law to compel the delivery of a specific thing.** In the present case an action could have been brought directly against the person in whose hands the obligations were placed."

So in this case an action could have been brought directly against the persons here made garnishees, in whose hands the obligations or bills of lading described in plaintiff's petition are alleged to have been placed; but the process of attachment cannot be used for the purpose of reaching those specific obligations or of enforcing a lien thereon.

> "The writ of attachment is not given as a means of enforcing privileges."
>
> Fenner, J., in *Gumbel vs. Beer,* 36 An. 496.

An attachment in Louisiana is a remedy adopted (like most of the Louisiana practice) from the common-law States. As in those States, attachment in Louisiana is purely the creature of statute. See *Harvey vs. Grymes*, 8 Martin, 201 (1820), where the Court said:

> "Suits by attachment were for the first time established in this country by special law in the year 1805. Their object is to enable the creditor to obtain payment of his debt, even in the absence of his debtor, if he finds property belonging to him within the jurisdiction of the Court."
>
> See, also, *Hunt vs. Norris*, 4 Mart. 528.

It is everywhere the law that:

> "Attachment must be strictly confined within the limits assigned by the Legislature, and cannot be extended by implication beyond the terms of the statute creating it."
>
> See 4 Cyclopedia of Law and Procedure, 401.

In Cross on Pleading, a standard Louisiana authority, at page 277 it is said:

> "The remedy (attachment) is *stricti juris* and cannot be extended to cases not coming within the obvious intendment of law; no extension of its scope can be permitted in consideration of equity, and the formalities described are rigidly exacted on pain of nullity."

Ibid., Section 356:

> "There are also some special cases where, in consideration of the nature of the obligation, an attachment will not lie. **It will not lie to compel the delivery of a specific thing, nor where the plaintiff has another remedy.**"

In the present case plaintiff in error had another—indeed, the only appropriate—remedy in the writ of sequestration, corresponding to the common-law replevin.

The decision of the Supreme Court of Louisiana was, moreover, similar to the doctrine obtaining in other jurisdictions where the writ of attachment is applied.

Waples on Attachment and Garnishment, page 22:

> "If the creditor has a pre-existing right in a thing arising from contract, he need not invoke the extraordinary process of attachment to secure it. Should he resort to this remedy to recover his debt, he need not aver the existence of his prior privilege; **and, indeed, he may as well abandon it.**"

Ibid., p. 23:

> "The general rule is that an attachment is to enforce liens of its own creation; not those pre-existing, whether conventional or of other character."

Ibid., p. 67:

> "Specific liens already existing cannot, as a general rule, be enforced by attachment or garnishment; there is little statutory authorization for such proceeding."

In **Gates vs. Bennett,** 33 Ark. 475, at page 486 the Supreme Court of Arkansas said:

> "Gates Bros. & Company could never recover the animals in controversy by attachment before a justice of the peace. Property may be seized upon a writ of attachment, and condemned to be sold to satisfy a judgment recovered in the action, **but it is no remedy for the recovery of specific property.**"

In **Mendelsohn vs. Smith,** 27 Mich. 2, the Court held:

> "If the property was the petitioner's, **an attachment was not the proper process to obtain it by;** and whether the attachment was properly dissolved or not was, therefore, immaterial to his rights, and could not preclude his testing them in replevin."

So here, if plaintiffs have a vendor's lien and would enforce it, their remedy was by way of sequestration—or by intervention in the bankruptcy proceedings.

Under Louisiana practice, as elsewhere, attachments and statutory liens have nothing at all to do with each other. A creditor can get an attachment without a lien; and, conversely, a lien alone will not justify an attachment. The question of statutory lien, independent of the process, does not and can not arise at all upon the use of a writ of attachment; and the question of statutory lien cannot, therefore, be interjected into this case.

It is obvious, indeed, in the nature of things, that a writ of attachment is not an appropriate remedy for the enforcement of pre-existing liens on specific property. The writ does not issue for the seizure of specific property. **The writ, indeed, does not describe any particular property,** but, as in this case, commands the Sheriff to seize and take into his possession **all** of the goods and chattels of the defendant which he can locate. Where the defendant is personally cited, as the defendants were in this case (*cf.* Record, p. 17), the proceeding by attachment is in no sense a proceeding *in rem*, but is entirely and purely a proceeding *in personam*, the attachment being an auxiliary and ancillary process alone; and as an attachment against a resident defendant is not a proceeding *in rem* at all, it is clearly not appropriate for the enforcement of a lien.

Bachman vs. Lewis, 27 Mo. App. 81:

> "An attachment is a proceeding at law *in personam* as to residents."

It is in this respect that a writ of attachment differs from a writ of sequestration. The latter writ, corresponding to the common-law writ of replevin, is the remedy provided by the Louisiana Code of Practice for the enforcement of liens such as the one asserted by the plaintiff in error here.

Cross on Pleading, Section 482:

> "It (sequestration) differs from attachment primarily and conspicuously in the fact that while an attachment is used for the assertion of rights *ad personam*, this remedy is used only for the protection of rights *in re* and *ad rem;* that is to say, it vindicates a proprietary right in property or the right to be paid out of the proceeds of property."

If it be true, as the authorities just cited show, that no question of a lien can arise upon an attachment generally, then it is even more obviously true that no such question can arise upon a garnishment; for it is the very essence of a garnishment to reach, **not any specific thing,** but only the general indebtedness of the garnishee to the defendant—only the interest of the defendant in the thing. You cannot enforce a lien upon that general net indebtedess; and, indeed, plaintiffs here claim no lien upon it.

Rood on Garnishments, Section 46:

"Plaintiff steps into the defendant's shoes and acquires his rights, no more and no less." (Citing a long list of cases.)

"The plaintiff stands upon the defendant's right, and is in no better condition than the latter would be if he were prosecuting the suit."

Bean vs. Miss. Bank, 5 Rob. 336:

"The plaintiff cannot exercise greater rights against the garnishee than his debtor."

Oakley vs. Railroad Co., 13 La. 567:

"It is a safe rule to adopt, that the **attaching creditor does not acquire greater rights against garnishee than the defendant himself possesses;** and as the defendant in an action against the garnishee for a debt due could not compel him to bring the sum claimed into court, even after judgment, the creditor cannot enjoy that privilege."

Hennen's Digest (La.), page 146, No. 16:

"Plaintiff can recover of garnishee no more than the defendant could have done at the date of the attachment."

Davis & Co. vs. Bastos, 9 La. An. 359:

"An attachment in the hands of a garnishee who has possesion of a bill of exchange belonging to the defendant arrests **the latter's interest in the bill and nothing more."**

Peet, Sims & Co. vs. Whitmore, 16 La. An. 48:

"The liability of a garnishee in an attachment suit cannot extend beyond the amount of funds in his hands belonging to the defendant."

The rule is the same in this court:

North Chicago Rolling Mill Company vs. St. Louis Ore and Steel Co., 152 U. S. 596, at page 597:

> "It is a recognized principle that the rights of the garnishor do not arise above or extend beyond those of his debtor; that the garnishee shall not, by operation of the proceedings against him, be placed in any worse condition than he would have been in had the principal debtor's claim been enforced against him directly; that the liability, legal and equitable, of the garnishee to the principal debtor is a measure of his liability to the **attaching creditor, who takes the shoes of the principal debtor and can assert only the rights of the latter."**

Schuler vs. Israel, 120 U. S. 507, at page 510:

> "As we understand the law concerning the condition of a garnishee in attachment, **he has the same rights in defending himself against that process at the time of its service upon him that he would have had against the debtor in the suit for whose property he is called upon to account.** And while it may be true that in a suit brought by Israel against the bank it could in an ordinary action at law only make plea of set-off of so much of Israel's debt to the bank as was then due, it could, by filing a bill in chancery in such case, alleging Israel's insolvency, and that, if it was compelled to pay its own debt to Israel, the debt which Israel owed it, but which was not due, would be lost, be relieved by a proper decree in equity; and, as a garnishee is only compelled to be responsible for that which, both in law and equity, ought to have gone to pay the principal defendant in the main suit, he can set up all the defenses in this proceeding which he would have in either a court of law or a court of equity."

It follows, necessarily, from the principles thus laid down, that, as the garnishor stands in the shoes of the main defendant, and reaches only the garnishee's net indebtedness to the main defendant, garnishment is no remedy for the enforcement of a pre-existing lien on a specific *res;* and that is the law everywhere.

No pre-existing lien can be enforced by garnishment proceedings.

Johnson vs. Brant, 17 Pac. 794 (38 Kans. 754):

> "Garnishment proceedings do not lie to enforce pre-existing equities or liens in favor of the plaintiff and against the intended garnishee or some third person who may file an interplea in the case, claiming the attached property, money or credits."

The Court said in this case (17 Pac. 794) at page 796:

> "But how the plaintiffs by such agreements could acquire a lien upon such funds, or how such a lien could be enforced, in a proceeding in attachment and garnishment, it is difficult to understand. A proceeding in garnishment can be maintained only upon the theory that the property attached by such proceeding belongs to the defendants in the action, and not to anyone else.
>
> "Now, proceedings in attachment and garnishment do not lie to enforce pre-existing equities or liens in favor of the plaintiff, whether against the intended garnishee or some third party, as Johnson was, or someone else, but only to attach something subject to attachment or garnishment belonging to defendant, and to subject the same to the payment of the plaintiffs' claims. **Plaintiffs never attach their own property or their own equities or liens, but they merely attempt to attach something belonging to debtor."**

So in this case the writ of attachment directed the seizure of property belonging to **defendants.** (See *supra*, pages 3, 4, and Rec., p. 7), and the citation to the garnishees called upon them to disclose their indebtedness to the **defendants.** See citation to garnishees at Record, page 14, reading:

> "You are hereby cited to declare on oath what property belonging to the defendant in this case, you have in your possession, or in what sum you are indebted to said defendant. * * *"

The plaintiff in error thus did not, and could not, under the Louisiana practice, attempt to attach its own property or equities or liens. It merely attempted to attach property belonging to its debtor **generally;** and that attempt necessarily fell because of the bankruptcy, which vested the right to such general property of the debtor in the Trustee in Bankruptcy.

Karp vs. Citizens' National Bank, 76 Mich. 679 (43 N. W. 680):

> "The object of the garnishment law is to furnish reasonable facilities for reaching property of the debtor due him, or held by him for third persons; but it never was intended to deprive a garnishee of any of his rights, or to subject him to double actions."

Holker vs. Hennessey, 141 Mo. 527 (42 S. W. 1090; 39 L. R. A. 165)

> "Revised Statutes, 1889, paragraph 4317, declaring that a person injured by a crime 'shall have a lien on the estate of the criminal from the time of his arrest, subject to any lien granted by law to the State,' does not authorize enforcement of the lien by garnishment."

Kimball vs. Moody, 97 Ga. 549 (25 S. E. 338):

> "A laborer for a contractor cannot, by a mere common lawsuit against the latter, and garnishment proceedings against the owner of realty upon which the contractor had agreed to build a house, enforce against such owner an alleged lien for labor done for the contractor upon the house, but can do so only by proper proceedings under the statute."

The Court said (25 S. E. 338):

> "The statute plainly and distinctly points out the method by which a laborer may establish and enforce a lien upon realty as against the owner thereof for labor done under the employment of a contractor employed by the owner to erect a building upon such realty. It is absolutely certain that such a lien cannot be nursed into existence nor enforced merely by substituting a contractor's lien suit against the contractor and causing a garnishment to be served upon the owner."

Richert vs. Kunz, 9 Mo. App. 283:

> "The lien given by statute to innkeepers upon the wages of guests cannot be enforced by garnishment."

Weston vs. Beverly & McCollum (Ga. 1912), 73 S. E. 404 (at p. 405):

> "Garnishment proceedings are purely statutory, and cannot be extended to cases not enumerated in the statute, and Courts cannot enlarge the remedy; and to entitle one to the benefit of the statute he must show that his case is clearly provided for. The remedy cannot be extended to doubtful cases. (Rood on Garnishment, Sec. 13; *Davis vs. Miller,* 111 Ga. 452 [36 S. E. 803].) * * *

> "Is the foreclosure of a laborer's lien a pending suit upon which garnishment process is predicable? We think not. * * * To authorize a valid garnishment, the judgment or decree upon which it issues must be final, and must be *in personam*, and not *in rem*." (20 Cyc. 980, and citations.)

In **Continental Distributing Co. vs. Swanson** (Wash. 1904), 139 Pac. 865, it was held that the liability of a purchaser in bulk cannot be enforced by garnishment. The Court said:

> "The appellant (the purchaser) is proceeded against upon the theory of a statutory liability, and not upon any theory of an assumption or guarantee of payment of indebtedness of an old firm. No such liability could be enforced against him in this proceeding."

Lane vs. Brinson, 78 S. E. 725 (Ga. 1913):

In this case the plaintiff, an attorney, claimed a lien on amounts collected for his client, and attempted to foreclose the lien by garnishment directed against the Sheriff, who held in his hands the amount which had been collected. The Sheriff answered the garnishment proceeding, and the plaintiff had judgment and collected his fees upon the garnishment. In a proceeding thereafter by his client against the plaintiff, the latter set up the garnishment judgment as concluding the issues, but the Court held that:

> "The judgment in the garnishment proceeding was absolutely void. The lien and foreclosure proceeding was not a suit upon which garnishment might issue. The proceeding was *in rem*, and in no sense an action *in personam*, so as to authorize a levy of execution by service of a summons of garnishment."

It is because the plaintiff in a garnishment proceeding stands in the shoes of the defendant as against the garnishee that he cannot use that process to litigate with the garnishee rights or titles which the garnishee may set up in himself. Garnishment reaches only admitted balances due the defendant by the garnishee, and the plaintiff in garnishment cannot by that summary process try contradictorily with the garnishee questions of title or interest in specific property.

Rice-Stix Company vs. Saunders, 130 La. 627;
Liminet vs. Fourchy, 51 La. An. 1299;
Ivens vs. Ivens, 30 La. An. 249.

As heretofore pointed out, the remedy provided in Louisiana for the enforcement of pre-existing liens on specific property is the writ of sequestration, corresponding to the common-law replevin. **(Louisiana Code of Practice, Articles 269-283.)***

Garnishment process does not issue in Louisiana upon a writ of sequestration any more than it would issue in a common law State upon a writ of replevin. It issues only upon a writ of *fieri facias,* or upon a writ of **attachment.**

See **Louisiana Code of Practice,** Article 246, which provides:

> **"Art. 245. Garnishment Under Attachment.** If the creditor know or suspect that a third person has in his possession property belonging to his debtor, or that he is indebted to such debtor, he may make such a person a party to the suit by having him cited to declare on oath what property **belonging to the defendant** he has in his possession, or in what sum

*See these articles printed in appendix.

> **he is indebted to such defendant,** even when the time of payment has not yet arrived.
>
> "The person thus made a party to the suit is termed a 'garnishee.' "

The Louisiana statute itself thus specifically provides (what is inherent in the very nature of the remedy) that garnishment process lies only to reach the general indebtedness of the garnishee to the defendant and no specific property right of the plaintiff in garnishment.

See, again, **Cross on Pleading,** Sec. 440, p. 335:

> "But it [garnishment process] has a distinct value as a means of execution, since it enables the seizing creditor to liquidate the right seized at the same time that it is reduced to possession by seizure; and since it enables a creditor to seize the **general** and unascertained rights of the defendant as against a third person. These are the distinctive functions of the garnishee process which should never be lost from view; and **it should, moreover, never be forgotten that the seizure relates to this general incorporeal right, and not directly to the property or effects in the hands of the garnishee."** (Black-letter ours.)

And see the same author, at Section 455, page 342:

> "The thing seized is an incorporeal right only **and not specific property."**

The jurisprudence of Louisiana has uniformly recognized the difference between writs of attachment and sequestration, but if the position of the plaintiff in error is well founded, then that distinction is wiped out and the difference between the writs has ceased to exist. The Supreme Court of Louisiana properly declined to sanction any such result.

If a plaintiff could enforce a lien by way of garnishment upon an attachment, then he would never need to sequester or replevy or levy upon the actual specific physical property upon which he claims a lien; all he would have to do, would be to make someone a nominal defendant and serve interrogatories upon the actual adverse claimant, in whose possession the specific property was alleged to be.

This is exactly what the plaintiff tried to do in **Hanna's Syndics vs. Loring,** 11 Martin 276, and exactly what the Supreme Court of Louisiana in that case held could not be done. To permit it to be done would not only obliterate the distinction between writs of attachment and sequestration, but would wipe out practically the use of writs of sequestration and make meaningless the principle announced by the Supreme Court of Louisiana in **Ansley vs. Stuart,** 119 La. 1, where the Court said:

> "The defendant in a suit is under no legal obligation to produce property in order that it may be seized under writs of sequestration, provisional seizure, or attachment, in the hands of the Sheriff. * * * We know of no law or precedent for supplementing a writ of sequestration or other writ by a bill of discovery and order on the defendant to deliver property disclosed by the evidence to be in his possession."

In the case cited the Supreme Court of Louisiana held that a writ of sequestration and the enforcement of a lien thereby could be accomplished only by the **actual physical seizure of the specific property** sought to be affected. If, however, the plaintiff can enforce a lien by the process of garnishment as it is attempting to do here, the doctrine of **Ansley vs. Stuart** becomes meaningless and empty. And if the plaintiffs cannot enforce a lien in this way and by this

process, then admittedly the jurisdiction of the State Court in the present case cannot be maintained.

The plaintiff in error conceded in argument below that if there were no question of pre-existing vendor's lien in the case, it would be properly out of court. But that is precisely the situation, because the only lien that can be before the Court **on attachment and garnishment process** is the lien of the attachment or garnishment itself. No other lien can be presented to the Court upon that process, because it is not an appropriate process for the enforcement of any other lien. It follows, therefore, that *quoad* the garnishment process no pre-existing vendor's lien was before the Court. Nothing was before it upon that process but the lien of the attachment itself, and as that lien was admittedly annulled by the Bankruptcy Act, the Court properly held that it had no jurisdiction to proceed further with the attachment, and the case is within the very terms of plaintiff's own admission.

Since the Supreme Court of Louisiana decided (and properly) that no question of the enforcement of a pre-existing lien can arise upon an attachment or garnishment, this case must be decided like every other case of attachment; the lien of the attachment being completely annulled and avoided by the Bankruptcy Act, and the property affected thereby being released, there is in this case nothing left to support the jurisdiction of the State Court so far as the attachment and garnishment are concerned. The only right of possession by the State Court in this case was based upon the attachment lien; for no other lien, it was held, could be before the Court in an attachment or garnishment proceeding. The attachment lien having been dissolved by the adjudication of the defendant in bank-

ruptcy within six days, as said **In re Tune,** 115 Fed. 906, the State Court's jurisdiction was dissolved with it.

> "When the only right of possession by a State Court of attached property is based on an attachment lien which is annulled by the adjudication in bankruptcy, the State Court loses all jurisdiction of the *rem,* which is transferred into the exclusive jurisdiction of the Court of Bankruptcy. * * * The cable which kept property in the grasp of the jurisdiction of the State Court parted when the law annulled the levy. The levy could not longer affect the property. The adjudication vacated it. Subdivision 'F' quashed it, and the property 'affected' by it was 'wholly released and discharged' from its power."
>
> 115 Fed. 906, at p. 919.

That the effect of Section 67f of the Bankruptcy Act is to annul attachments and release the property affected thereby, even though that property will not pass to the Trustee, as a result of the annulment of the attachments was established by **Thompson vs. Fairbanks,** 196 U. S. 516, at page 528, where the Court quoted with approval the opinion of the State Court as follows:

> "It is urged that with the annulment of the attachment, the property affected by it passed to the trustee as a part of the estate of the bankrupt under the express provisions of Section 67f. There would be more force in this contention were it not for the provision that, by order of the Court, an attachment lien may be preserved for the benefit of the estate. If there is no other lien on the property, there can be no occasion for such order; for on the dissolution of the attachment, the property unless exempt, would pass to the trustee anyway. It

> is only when the property for some reason may not otherwise pass to the trustee as a part of the estate, that such order is necessary. We think such is the purpose of that provision, and that unless the lien is preserved, the property, as in the case at bar, may be held upon some other lien and not pass to the trustee. **(In re Sentenne & Green Co.,** 120 Fed. Rep. 436.)"

See, also, the recent decision in **C. B. & Q. Railroad Company vs. Hall,** 229 U. S. 511, holding that an attachment of exempt property is dissolved by Section 67f.

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2. The decision of the Supreme Court of Louisiana was right, even independently of the provisions of Sec. 67f of the Bankruptcy Act, on the general principle that after the filing of a petition in bankruptcy a State Court has no jurisdiction to proceed with claims against the bankrupt or his property, except, possibly, in cases in which the State Court is already in possession of some of that property under appropriate process. That exception does not exist here, because the State Court (according to its own finding) was not in possession of any property.

The Supreme Court of Louisiana, by its decision, recognized the general rule which has heretofore been declared by this Court, that the filing of the petition in bankruptcy puts the property of the defendant in *custodia legis.*

See **In re Watts,** 190 U. S. 1; **Murphy vs. Hoffman,** 211 U. S. 562; **Acme Harvester Company vs. Beekman Lumber Company,** 222 U. S. 307:

> "It is the purpose of the Bankruptcy Law, passed in pursuance of the power of Congress to

> establish a uniform system of bankruptcy throughout the United States, to place the property of the bankrupt under the control of the Court, wherever it is found, with a view to its equal distribution among the creditors. The filing of the petition is an assertion of jurisdiction with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate. The exclusive jurisdiction of the Bankruptcy Court is so far *in rem* that the estate is regarded as *in custodia legis* from the filing of the petition."

Where, at the time of the filing of the petition in bankruptcy, the State Court is in the actual possession of property upon which it is entertaining proceedings to enforce a pre-existing lien, it has been held that under the doctrine of comity, the possession of the State Court should not be disputed. This rule was first declared in admiralty in the leading case of **Taylor vs. Carryl,** 20 Howard, 583, and has been applied in a number of decisions under the bankruptcy act. There are, indeed, a number of Federal authorities declaring that even in cases where the State Court is in actual possession, it may, by virtue of the superior right of the Bankruptcy Court, be required to surrender its possession. This is notably true in the case of property in the hands of receivers in the State Court, where the appointment of a receiver is thereafter made the basis of a bankruptcy petition; and there are decisions in a number of the Federal Courts that even in other cases it is the controlling right and purpose of courts of bankruptcy to marshal and determine conflicting claims against the bankrupt's property (such are were here presented), and that to facilitate the proper distribution and administration of the bankrupt's estate, it is proper to require even a State Court in pos-

session to surrender that possession to the Bankruptcy Court.

> *Cf.* **In re Hynes Buggy and Implement Co.,** 130 Fed. 977; **In re Dana,** 167 Fed. 529; **New River Coal Land Company vs. Ruffner Bros.,** 165 Fed. 881; **Orr vs. Tribble,** 158 Fed. 897; **In re Oxley,** 182 Fed. 1019; **Virginia Iron, Coal & Coke Co. vs. Olcott,** 197 Fed. 730.

Where, however, the State Court is not in possession of any property, there can be no question but that the Bankruptcy Court alone is vested with administration of all of the bankrupt's property, and with the right to pass upon and determine all claims or liens asserted against him. In this case the Supreme Court of Louisiana put its decision finally upon the ground that it was not in possession of any property. See the syllabus of the opinion of the Supreme Court of Louisiana upon rehearing, appearing at page 43 (the syllabus being by the Court and official):

> "An attachment by means of a writ of garnishment, **does not change the possession of the property and place it either in the possession of the Court or** the one who has obtained the writ; for it may be that the property may never pass out of the hands of the garnishee." (Black-letter ours.)

Mr. Justice Land, of the Supreme Court of Louisiana, delivering the original opinion of that Court, said (Record, page 35, 132 La. 231, at 234):

> "The property remains in the possession of the garnishee, and the Court has no authority to order its

> delivery to the Sheriff until the plaintiff obtains a final judgment against the defendant maintaining the attachment."

This was in accord with earlier decisions in Louisiana.

Cross on Pleading, p. 344:

> "But the seizure in such a case [by way of garnishment] does not affect the possession of the property. It relates merely to the possession of the incorporeal right belonging to defendant."

Even if otherwise, however, the present decision upon this question of State practice would be binding here.

The Supreme Court of Louisiana thus held (finally, so far as this Court is concerned) that there was no property within its physical possession and control. That being so, it is clear that the Supreme Court of Louisiana had no jurisdiction to maintain any proceeding asserting a claim against the bankrupts and a lien against their property. Your Honors could not reverse the Supreme Court of Louisiana without in effect declaring that a State Court has jurisdiction to proceed with claims against a bankrupt, and with the determination of liens asserted against his property, even in the face of an adjudication in bankruptcy, **in every case,** including specifically cases where no property is in the possession or control of the State Court. But such a doctrine would destroy the exclusive functions of the bankruptcy court and would be squarely opposed to the rule announced in **Acme Harvester Company vs. Beekman Lumber Company,** 223 U. S. 300, and **Murphy vs. Hoffman,** 211 U. S. 562. See, also, **Mueller vs. Nugent,** 184 U. S. 1, 14.

Cf. **In re Schow,** 213 Fed. 514, at p. 519:

> "The filing of a petition in bankruptcy is a caveat to all the world, and in effect an attachment and injunction. **(Mueller vs. Nugent,** 184 U. S. 1, 14, 22, Sup. Ct. 269, 46 L. Ed. 405.)
>
> "It is the purpose of the bankruptcy law to place the property of the bankrupt in the control of the Court, wherever it is found, with a view to its equal distribution among the creditors. The filing of the petition is an assertion of jurisdiction with a view to determining the status of the bankrupt and a settlement and distribution of his property. The exclusive jurisdiction of the bankruptcy court is so far *in rem* that the estate is regarded as *in custodia legis* from the time of filing the petition. **(Acme Harvester Co. vs. Beekman Lumber Co.,** 222 U. S. 300, 32 Sup. Ct. 96, 56 L. Ed. 208.)"

As Mr. Justice Land of the Supreme Court of Louisiana pointed out (Record, page 36):

> "If plaintiff had executed the writs of sequestration by seizure of any of the cotton alleged to have been sold by the defendant, the case would be different, but this writ specially provided by law for the enforcement of liens and privileges on movables (C. P. Article 274, Sec. 7) was not executed on any of the cotton described in the petition."

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3. It thus becomes apparent that, **when properly analyzed in its last essence, the decision of the Louisiana Supreme Court rested upon two questions of State practice—namely:**

1. Whether the writ of garnishment upon an attachment can be employed to enforce a pre-existing lien.

2. Whether the operation of a writ of garnishment under attachment is sufficient to bring any property within the possession and custody of the State Court.

The decision of the Louisiana Supreme Court upon these points of State practice is conclusive; and when these questions are answered in the negative, as the Louisiana Supreme Court did answer them, the case is disposed of without there being, from any standpoint, any infringement upon any Federal right.

See **Yazoo & Mississippi Valley Railroad Co. vs. Brewer,** 231 U. S. 245, where the Court said:

> "The disposition of this question by the State Court in the manner we have stated, controls the decision of the case, and is sufficiently broad to support the judgment without involving the denial of any Federal right asserted by the plaintiff in error."

Waters-Pierce Oil Company vs. Texas, 212 U. S. 116:

> "It is well settled in this court that where a State Court decides a case upon independent ground not within the Federal objections taken, and that ground is sufficient to maintain the judgment, this Court will not review the case."

Cramer vs. Wilson, 195 U. S. 408:

> "Whether a deed given by a bankrupt a year prior to the adjudication was fraudulent, or whether it was absolute, or merely by way of mortgage, leaving him an equity of redemption, are no Federal questions, and the decision of the State Court is conclusive, and cannot be reviewed by this Court."

Thompson vs. Fairbanks, 196 U. S. 516:

> "Whether and to what extent a chattel mortgage, which includes after-acquired property is valid, is a local and not a Federal question, and in such a case, this Court would follow the decision of the State Court."

In re Wabash Railroad Company vs. Adelbert College, 208 U. S., where at page 611, the Court said:

> "The ascertainment of the amount due the plaintiffs in the issue of an execution against the Toledo, Wabash and Western Railroad Company may be regarded as independent of the proceedings for the enforcement of the lien. Whether such a judgment can be rendered upon a proceeding of this nature (**Giddings vs. Barney,** 31 Ohio Stat. 80) is a question exclusively for the State Court."

See, also, **de Bearn vs. Safe Deposit Co.,** 233 U. S. 24; **Leathe vs. Thomas,** 207 U. S. 93; **Eustis vs. Bowles,** 150 U. S. 361; **Giles vs. Teasley,** 193 U. S. 146.

We have up to the time of writing this brief not been served with any copy of the brief of plaintiffs in error, although it is within ten days of the probable date of argument. We are, therefore, embarrassed in anticipating their argument in this court for purposes of reply. Assuming, however, that they will rely upon the authorities which they cited upon their application for rehearing in the State court, we may point out that none of the cases so cited is in point. In not one of them was an **attachment within four**

months of an adjudication in bankruptcy supported upon any ground, and not one of them even suggests that it can be supported. Taking them up in the order in which they were cited below:

(*a*) The doctrine of **Metcalf vs. Barker,** 187 U. S. 175 (holding a judgment enforcing a pre-existing lien not affected by bankruptcy), is not applicable here, because there is no such thing in Louisiana, at any rate, if anywhere, as an attachment to enforce a pre-existing lien. Since no question of pre-existing lien can be before the Court on the attachment, this case *quoad* the attachment and the garnishment, is precisely as if the plaintiff had made no allegation of vendor's lien. The writ of attachment fell with the adjudication in six days, and the plaintiff could take nothing thereby.

When the plaintiff in error sued out its petition, it applied as the statement of facts shows, for writs of both attachment and sequestration. Plaintiff in error at that time obviously had no idea of attempting to argue that the writ of attachment could be employed to effectuate its pre-existing lien. If it had intended to make any such argument, it would have been unnecessary for it to apply for and procure the issuance of a writ of sequestration. The original intention of the plaintiff in error was to use the writ of sequestration to enforce its vendor's lien, and the writ of attachment to reach any general assets of the defendants, E. Martin & Company. It has been deprived of any benefit under the writ of attachment by the supervening bankruptcy. That is in strict accord with the Bankruptcy Act, which was designed to prevent a race of diligence among attaching creditors, and prevent any one creditor from obtaining an advantage over other creditors by attachment

proceedings within four months of adjudication in bankruptcy. In denying the plaintiff in error the right to profit by its attachment as such, the Supreme Court of Louisiana did nothing except apply the Bankruptcy Act as written and designed. The decision of the Supreme Court of Louisiana left intact and undisturbed the writ of sequestration which plaintiff in error has caused to issue (but upon which it caused no property to be seized), and also left intact and undisturbed the plaintiff in error's claim of vendor's lien.

In **Metcalf vs. Barker,** a lien was obtained by the institution of a suit, not only more than four months before bankruptcy, but actually almost **two years** before the Bankruptcy Law of 1898 ever came into existence, and **fully two and a half years** before the adjudication in bankruptcy. The lien there was obtained by the filing of a creditor's bill in December, 1896. The National Bankruptcy Act was not enacted until July, 1898, and adjudication did not take place until May, 1899. It was very properly held that a lien which originated two and a half years before the adjudication was not annulled, and could be enforced upon property actually and physically within the control of the jurisdiction of the State Court.

Note particularly that the property there was actually and concretely within the physical control of the State Court more than two years before the time of the adjudication, and had been taken into such actual physical control by the State Court upon proceedings appropriate for the enforcement of a lien—*i. e.*, a creditor's bill in equity—and not at all upon an attachment.

Hence, there was in that case no question of the attempted use of an attachment within four months of bank-

ruptcy, no attempt to use an attachment to enforce a lien, and, indeed, no question of an attachment at all.

If, by actual seizure of specific property, the process of **sequestration** had been actually executed, in this case, more than four months before bankruptcy, to enforce a lien arising more than four months before bankruptcy, then, and then only, would **Metcalf vs. Barker** be in point and applicable. But the present case is before your Honors upon the attempted enforcement of a general **attachment** taken out within six days of bankruptcy, and upon that question alone—and with that question **Metcalf vs. Barker** does not even remotely treat.

Cf. **In re Schow,** 213 Fed. Reporter, 514, at page 518:

> "The case of **Metcalf vs. Baker,** 187 U. S. 165; 23 Sup. Ct. 67; 47 L. Ed. 122, hereinabove mentioned and which was cited by counsel for Schlechtweg, has no application to a matter like the one now before the Court, as that decision, aside from construing the intent and purpose of Section 67f of the Bankruptcy Act, takes cognizance only of the law of New York State, only in so far as upholding the validity of an attachment lien which originated by legal proceedings brought in that State and more than one year old at the time the bankruptcy petition referred to in that case was filed. The practice in Connecticut is, however, quite unlike that in the State of New York, in regard to attachment liens, and the decision in that case therefore can have no bearing on the matter here in point. Colby & Co.'s attachment lien having been released by the taking of the officer's receipt, on February 8, 1913, there was no attachment lien more than four months old existing on any part of Schow's said stock in trade in favor of that corporation, on December 17, 1913."

(b) The case of **Henderson vs. Mayer,** 225 U. S. 631, cited below by plaintiff in error, is even more radically dissimilar from the present case. There was no question in that case of the jurisdiction of the State Court. There was not even any discussion of the topic. Indeed, the property seems to have been surrendered by the Sheriff of the State Court to the Bankruptcy Court without question, although the Sheriff had theretofore taken the property into the actual physical possession of the State Court, **not** upon a writ of attachment, but upon a proceeding corresponding to the Louisiana provisional seizure, and specifically provided by the Georgia Code for the enforcement of a lessor's lien. That was obviously a much stronger case for the maintenance of the State Court's jurisdiction than this case. That, again, was a case such as this case would have been had the writ of sequestration been actually executed upon specific property, and had such property been physically levied upon and physically taken into the possession of the State Court. But, strong as the situation was there, even in that case the jurisdiction of the State Court to determine the rights of the parties was not even sought to be maintained. The property was surrendered to the Bankruptcy Court, and no issue of jurisdiction was even raised. Hence, upon the only issue in the present case—that of jurisdiction in the State Court—the case of **Henderson vs. Mayer** does not even purport or pretend to pass. When counsel say that in **Henderson vs. Mayer** the Supreme Court passed upon the question now before this Court, they make a statement that cannot be supported upon any analysis of the case.

All that **Henderson vs. Mayer** may be said to indicate as to the present case is that plaintiff's alleged vendor's lien might be recognized and enforced by the **Bankruptcy Court** upon appropriate proceedings here, just as Mayer's lessor's lien was held entitled to recognition and enforce-

ment by the **Bankruptcy Court** there. But we have not denied this. We have not contended that the Bankruptcy Court could not recognize and enforce plaintiff's alleged vendor's lien. Indeed, we have heretofore suggested that the Bankruptcy Court was the proper tribunal to pass upon plaintiff's claim to a lien on negotiable bills of lading. Evidently the counsel of Mayer, the landlord, in **Henderson vs. Mayer,** thought that the Bankruptcy Court was the proper tribunal to pass upon his client's claim to a lessor's lien, because he had the officer of the State Court voluntarily surrender to the Bankruptcy Court property actually seized **under an appropriate writ** in the State Court and within that Court's admitted physical possession. What Mayer's counsel there admitted was the proper course for him to pursue in that case is precisely the course which we have claimed that plaintiff's counsel here ought to pursue—namely, submit the alleged lien to the Bankruptcy Court. Hence, so far from being an authority for the plaintiff in error in this case, the case is an authority against them, and indicates that its relief (if any it be entitled to) lies in the Bankruptcy Court.

Henderson vs. Mayer went to the United States Supreme Court upon an appeal from the Bankruptcy Court, not from any State Court. It presented no question of attachment, and, indeed, no question of the jurisdiction of the State Court at all. But the question of jurisdiction in the State Court is the **only** question in the present case. Hence, the only question in the present case is not involved in that case at all. How, then, can it be an authority here?

Everything we have said about **Henderson vs. Mayer** is equally applicable to **Austin vs. O'Reilly,** 2 Wood (U. S.) 670, where there was likewise no question of jurisdiction of a State court, not even under the peculiar statutory provisions of Mississippi, differing radically from those of Louisiana.

(*c*) In **In re Blair,** 108 Fed. Rep. 529, as the extract from the decision quoted by counsel in their application for rehearing in the State court itself shows, the attachment was instituted **more** than four months prior to the filing of the petition in bankruptcy. That, of course, plainly takes the case out of the provisions of Section 67f of the Bankruptcy Act, and prevents that case from being any sort of an authority in the present case, where the attachment was instituted within five days of bankruptcy.

In **In re Blair,** as in **Metcalf vs. Barker,** although there was a judgment obtained within four months, which judgment was itself annulled by Section 67f, yet there was also another prior judgment arising more than four months before the adjudication which was not annulled or affected; and, as there was property in those cases physically within the control of the State Court actually levied on and seized upon **appropriate process,** the lien which antedated the four-month period was properly held enforceable. But in the present case the only lien which can possibly be before the Court upon this attachment proceeding under the Louisiana practice is the attachment lien itself, which in this case did **not** antedate the four-month period. That attachment lien, having arisen in the present case (unlike in **In re Blair**) within four months of bankruptcy, was annulled by Section 67f, and with its annulment the State Court's jurisdiction of the property was lost. For that jurisdiction cannot be supported by reference to any other lien, because no other lien can be asserted or enforced by an attachment proceeding.

(*d*) In **Gumbel vs. Beer,** 36 La. An. 484, as a reading of the decision will show, the Court did not hold, and had

no occasion to hold, that a writ of attachment could be used to enforce a lien.

All that was there decided, as indicated in the extract quoted in argument below by counsel of plaintiff in error themselves, was that an attachment may issue where there exists a lien as well as where there exists none.

That is very far from saying that an attachment may issue or be used for the purpose of enforcing a lien.

The existence of a lien is no obstacle to the issuance of an attachment; but upon the attachment the plaintiff can take nothing from its claim of lien. That claim can be enforced only by a sequestration.

If no question of bankruptcy were here involved, no one would contend that plaintiff here had no right to an attachment merely because it claimed a lien. We would, however, contend that upon its attachment no question of special lien (other than the attachment lien itself) could arise. Nothing in **Gumbel vs. Beer** even remotely sanctions the use of an attachment for the enforcement of a specific lien.

If a plaintiff applies for and obtains writs of both attachment and sequestration in the same case, he takes by his writ of attachment nothing more than he would take in an ordinary case where he claimed no special lien. His rights upon the special lien must depend, then, upon the execution of the writ of sequestration.

In other words, while the existence of a lien certainly and obviously does not bar a plaintiff from procuring a writ of attachment if the grounds for an attachment exist, it does not follow that the attachment procured upon the general grounds and allegations required for attachments may be used to enforce a specific lien. It cannot be. The writ

of attachment and the writ of sequestration each stands upon its own bottom, and the plaintiff can obtain from either one only such rights as he might have obtained from that one had no grounds for the use of the other existed, and had the use of the other not been attempted.

If a plaintiff in the same case procures both writs, he takes from each writ only that which he could have taken had he not been entitled to the other.

Gumbel vs. Beer decides that the plaintiff may take both writs in the same case; but it does not decide that he can use either writ as a substitute for the other, or can take from one writ the benefit for which the other writ alone is designed.

Indeed, Mr. Justice Fenner pointed out specifically that Louisiana law forbade any such result, saying (36 La. An., at p. 496) "Attachments are not given by our law as a means of enforcing liens."

In this case the supervening bankruptcy deprives plaintiff of the opportunity to take anything by the writ of attachment, because to permit it to do so would permit it, *e. g.*, to take to itself the credit balances of E. Martin & Company in the hands of the banks which were made garnishees. This plaintiff plainly cannot do as against the trustee in bankruptcy, representing the other creditors. Plaintiff, is therefore, limited to the writ of sequestration which it caused to issue, but failed to execute.

In argument below we challenged counsel for plaintiff in error to produce one single case in which an attachment

within four months of bankruptcy has been maintained on any ground, or one single case where a pre-existing lien on specific property has been enforced or held enforceable in any court by general attachment proceedings, much less by a garnishment upon an attachment.

That challenge counsel have not met because they cannot meet it. Not a single case to such effect can be found.

Not a single case can be produced where an attachment or garnishment proceeding instituted within four months of the adjudication of bankruptcy, has been maintained, or where a State Court has upheld its jurisdiction to proceed after an adjudication of bankruptcy without any property being actually and physically within its control, upon appropriate proceedings to enforce a pre-existing lien. Every one of the cases cited below by the plaintiff in error where the jurisdiction of the State Court to proceed was upheld and maintained, was, as pointed out by Mr. Justice Land, in his opinion in the Supreme Court of Louisiana, a case where the State Court had, prior to the petition in bankruptcy, been, **by the use of appropriate process,** put in actual possession of property subject to a pre-existing lien, which the writ of sequestration or provisional seizure, or in common-law States, replevin, was employed to enforce. In not one of the cases cited were the proceedings by attachment. The Supreme Court of Louisiana had itself, in earlier cases, where property had been brought within its actual physical possession, **upon appropriate writs** to enforce a pre-existing lien, upheld its jurisdiction in the face of supervening bankruptcy. (See **I. Trager Company vs. Cavaroc,** 123 La. 319.) The distinction between those cases and this case, where no property was physically seized, and where the only process employed was that of attachment, was recognized and pointed out by the Supreme Court of

Louisiana. The same distinction applies to **Eyster vs. Gaff,** 91 U. S. 521, and the other Federal cases cited by plaintiff in error.

If your Honors **force jurisdiction upon the State Court** here (apart from the anomalous character of such a result on general principles), this will be absolutely the first case on record where an attachment proceeding within four months of an adjudication in bankruptcy has been upheld.

If your Honors uphold the present proceeding because of plaintiff's alleged vendor's lien, this will be not only the first case on record permitting a lien on specific property to be asserted by attachment, but it will be a square and direct reversal of the doctrine of **Hanna's Syndic vs. Loring,** 11 Martin, 276, and of all other decisions on a similar question in other States. Such a decision would sweep out the writ of sequestration from the Louisiana Code of Practice, and permit any lien claimant to establish his lien upon specific property without actually levying upon that property by the simple process of garnisheeing the adverse claimant.

Such a decision would, in effect, establish the right of discovery to which **Ansley vs. Stuart,** 119 La. 1, says there is no right under Louisiana practice.

Such a decision, finally, would destroy the well-established rule that garnishment process upon an attachment reaches only the garnishee's indebtedness to the defendant, or the defendant's net interest, and not any specific *res;* that a garnishment in aid of a suit against a resident defendant is a proceeding *in personam,* and not *in rem.*

It would compel an adverse claimant to produce and surrender property claimed by his opponent, although **Ansley vs. Stuart** says that is precisely what he cannot be made to do, in Louisiana at any rate.

We respectfully submit that your Honors will establish no such radical departure in the bankruptcy jurisprudence or in the State practice of Louisiana.

> "Attachments are not given by our law as a means of enforcing liens."
>
> 36 An. 496 (Fenner, J.)

Hence, no question of a vendor's lien can enter into the consideration of this case. Upon the question of the State Court's jurisdiction to maintain this attachment, this case must be decided, as if no allegation of a vendor's lien were even made. The sole question is, then: Can an attachment or an attachment lien instituted within four months of bankruptcy stand? If it cannot—and Section 67f says it cannot—no other lien can save this attachment proceeding from annihilation, because no other lien can be involved or enforced upon an attachment proceeding.

Moreover, a State Court cannot proceed after an adjudication in bankruptcy to entertain and decide suits involving claims against a bankrupt and his property where by its own finding it is not in possession of property against which the claims are asserted. If the State Court could proceed in such a case, it could proceed in all cases, and the jurisdiction of the bankruptcy court to administer the estate of the bankrupt would be in effect unavailing.

We submit that the writ of error should be dismissed because no Federal right was **denied** to anyone, and certainly not to plaintiff in error; and because the decision of the Supreme Court of Louisiana rested in the last analysis

upon pre-Federal questions of State practice which this Court will not review.

We submit, finally, that if this Court has jurisdiction to examine the writ of error upon its merits, it should find that the decision of the Supreme Court of Louisiana on such Federal questions as were passed upon by it was right.

We pray accordingly that the writ be dismissed or the decision affirmed.

Respectfully submitted,

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APPENDIX I.

Extracts from Articles of Louisiana Code of Practice on Attachment, Garnishment and Sequestration.

Article 238:

Attachments. An attachment in the hands of third persons is a mandate which a creditor obtains from a competent Judge, commanding the seizure of any property, credit, or right, belonging to his debtor, in whatever hands they may be found, to satisfy the demand which he intends to bring against him.

Article 240:

Causes for Attachment. A creditor may obtain such attachment of the property of his debtor in the following cases:

1. Permanent Departure—When such debtor is about leaving permanently the State, without there being a possibility, in the ordinary course of judicial proceedings, of obtaining or executing judgment against him previous to his departure, or when such debtor has already left the State permanently.

2. Non-Residence—When such debtor resides out of the State.

3. Concealment to Avoid Service—When he conceals himself to avoid being cited and forced to answer to the suit intended to be brought against him.

4. Fraudulent Mortgage, Assignment and Disposition of Property—When he has mortgaged, assigned or disposed of, or is about to mortgage, assign or dispose of, his property, rights or credits, or some part thereof, with intent to defraud his creditors or give an unfair preference to some of them.

5. Fraudulent Conversion in Money, etc.—When he has converted, or is about to convert, his property into money or evidences of debt, with intent to place it beyond the reach of his creditors.

Article 246:

Garnishment Under Attachment. If a creditor know or suspect that a third person has in his possession property belonging to his debtor, or that he is indebted to such debtor, he may make such a person a party to the suit, by having him cited to declare on oath what property belonging to the defendant he has in his possession, or in what sum he is indebted to such defendant, even when the term of payment has not yet arrived.

The person thus made a party to the suit is termed a garnishee.

Article 247:

Interrogatories to Garnishee. A creditor may likewise annex to his petition interrogatories on facts and articles, to be answered categorically under oath by such garnishee, as to the nature of the property belonging to the defendant which may be in his possession, and as to the amount of the sums for which he may be indebted to him.

Article 269:

Sequestration. Sequestration is a mandate of the Court, ordering the Sheriff, in certain cases, to take into his

possession and to keep a thing of which another person has the possession, until after the decision of a suit, in order that it be delivered to him who shall be adjudged entitled to have the property or possession of that thing. This is what is properly calle da judicial sequestration.

Article 275:

Grounds for Sequestration. Sequestration may be ordered at the request of one of the parties in a suit, in the following causes:

1. Suit for Possession—When one who had possession for more than one year has been evicted through violence, and sues to be restored to his possession.

2. Suit for Possession of Movables—When one sues for the possession of movable property, and fears that the party having possession may send the property in dispute out of the jurisdiction of the Court during the pendency of the suit.

3. Waste or Conversion of Revenues—When one claims the ownership or the possession of real property, and has good ground to apprehend that the defendant may make use of his possession to dilapidate or to waste the fruits or revenues produced by such property, or convert them to his own use.

4. Ruin to Dotal Property—When a woman sues for a separation from bed and board, or only for a separation of property from her husband, and has reason to apprehend that he will ruin her dotal property, or waste the fruits or revenues produced by the same, during the pendency of the action.

5. In Case of Respite—When one has petitioned for a stay of proceedings and a meeting of his creditors, and such creditors fear that he may avail himself of such stay of proceedings to place the whole or a part of his property out of their reach.

6. By Special Mortgage Creditor—A creditor by special mortgage shall have the power of sequestering the mortgaged property when he apprehends that it will be removed out of the State before he can have the benefit of his mortgage, and will make oath of the facts which induced his apprehension.

7. In Cases of Lien or Privilege—The plaintiff may obtain a sequestration in all cases where he has a lien or privilege on property, upon complying with the requisites provided by law.

8. Apprehended Concealment or Disposition Pending Suit—A sequestration may be ordered in all cases when one party fears that the other will conceal, part with or dispose of the movable in his possession during the pendency of the suit, upon complying with the requisites of the law.

APPENDIX II.

Jurisdiction of Bankruptcy Court to Pass on Plaintiff's Alleged Lien.

In the argument in the State Court, repeated in a brief to be filed in this Court, of which we have just received the proof, stress was sought to be laid by plaintiff in error upon

the alleged fact that the bankruptcy court would not have had jurisdiction to pass upon its claim of lien. This result is supposed to follow from the fact that S. Gumbel & Company, Limited, were in possession of the **negotiable** bills of lading on which plaintiffs claimed that their lien rested. Even if it were true that plaintiffs could not have asserted their lien in the bankruptcy court and had it passed upon there, that fact would not affect the present case, which involves merely the question whether the State Court was bound to maintain jurisdiction of this particular proceeding. If the plaintiffs have mistaken their remedy in the State court, the lack of jurisdiction in the State court to maintain the particular proceeding here attempted cannot be cured or at all affected by the circumstance that the bankruptcy court would have no jurisdiction. For completeness of treatment, however, we invite your Honors' attention to the following points tending to show that, as a matter of fact, the bankruptcy court would have had jurisdiction and authority to determine and marshal all claims, by whomsoever urged, bearing in any degree upon the estate of **E. Martin & Company**.

1. All of the authorities cited by plaintiffs' counsel in their brief have been entirely superseded by the amendments made to the bankruptcy court in 1903 and 1910.

Prior to the year 1903, §2 of Section 23 of the Bankruptcy Act read:

> "Suits by the trustee shall only be brought or prosecuted in the Courts where the bankrupt whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant."

In the year 1903 this section was amended by the addition of the following words at the close of the foregoing paragraph:

> **"Except suits for the recovery of property under Section 60, Subdivision b; Section 67, Subdivision e."**

And in 1910 the section was further amended by the further addition of the words:

> **"And Section 70, Subdivision e."**

So that by virtue of the amendments of 1903 and 1910, and since those dates, only, Section 23 of the Bankruptcy Act reads:

> "Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant, **except suits for the recovery of property under Section 60, Subdivision f; Section 67, Subdivision e; and Section 70, Subdivision e."**

And Section 67e of the Bankruptcy Act was similarly amended in 1898 by the addition of the lines reading:

> "For the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

Section 70e contains a similar amendment, made for the first time **in 1910,** and the section as amended now reads:

> "e. The trustee may avoid any transfer by the bankrupt of his property **which any creditor of such**

> **bankrupt might have avoided,** and may recover the property so transferred, or its value, from the person to whom it was transferred unless he was a *bona fide* holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a *bona fide* holder for value. **For the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any State Court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."**

The language of the **amended** sections is certainly definite and clear enough to show that the bankruptcy court would have had ample jurisdiction to entertain an attack upon the transfers to S. Gumbel & Company, Limited, of which the plaintiff, in his petition, complains.

Every decision cited by plaintiff's counsel in their memorandum was decided **prior** to these amendments. This is notably true of the case of **Bardes vs. Hawarden Bank,** 178 U. S. 524, upon which plaintiff particularly relies. It was for the very purpose of curing the defect in jurisdiction announced by that decision that the amendments were adopted; and those amendments were extended and carried further in 1910. This is made plain by the discussions of the subject in a leading authority.

Collier on Bankruptcy, 9th Edition (1910), page 475:

> **"Purpose of Amendments of 1903 and 1910.** The direct results of the case of **Bardes vs. Bank** was, as we have seen, to deprive the District Court of jurisdiction of a suit brought by the trustee for the recovery of property in the hands of an adverse claimant. It had an appreciable effect upon analogous provisional and summary remedies. The amendment of

1903 added to Section 70e a clause conferring upon the court of bankruptcy jurisdiction of a suit to recover property which had been transferred in fraud of creditors, and which any creditor might have avoided. Amendments restoring concurrent jurisdiction, at least as to suits to recover property, became imperatively necessary and were very generally demanded. This demand was met by the changes made in this subsection and in Sections 60b, 67e and 70e by the act of 1903. But the amendatory act failed to include in Clause b of this section, suits for the recovery of property under Section 70e. This was evidently a defect. It at once raised a doubt whether a suit to recover property transferred more than four months before the bankruptcy could be instituted other than in a State court. The failure to include suits for the recovery of property under Section 70e was obviously an inadvertence. It was at least recognized as such by Congress in enacting the amendment of 1910, which included a reference to suits brought under Section 70e and, as the law now stands, suits for the recovery of property transferred in fraud of creditors prior to the four months' period may be brought in district courts. The method adopted by the revisers, of adding the limiting words to the subsection under discussion, makes its phrasing somewhat awkward. There can, however, be no doubt about their intention or the intention of Congress, and little less doubt as to the ultimate construction put on the new words by the Courts."

See, also, same author, p. 24.

Every one of the decisions cited by counsel for plaintiffs in their memorandum arose prior to 1903 and were decided under the law prior to the amendments of 1903 and 1910.

Thus, **Bardes vs. Hawarden Bank,** 178 U. S. 524, arose

in 1899; **Louisville Trust Co. vs. Comingor,** 184 U. S. 18, arose in 1899; **First National Bank of Chicago vs. Chicago Title & Trust Co.,** 198 U. S. 280, arose in 1901.

The dates, of course, are conclusive. Reference to the passages quoted above from **Collier,** or any other standard authority, will bear out the fact that the effect of these decisions *quoad* jurisdiction of the bankruptcy court has been destroyed by the amendments of 1903 and 1910.

See, also, **Newcomb vs. Biwer,** 199 Fed. 529:

> "Bankrupt Act July 1, 1898, c. 541, Sec. 70e, 30 Stat. 566 (U. S. Comp. St. 1901, p. 3452), as amended by Act Cong. June 25, 1910, c. 412, 36 Stat. 842 (U. S. Comp. St. Supp. 1911, p. 1511), provides that a bankrupt's trustee may avoid any transfer by the bankrupt of his property which any creditor might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he is a *bona fide* holder for value prior to adjudication. The amendment of 1903 (Act February 5, 1903, c. 487, Sec. 13, 32 Stat. 799 (U. S. Comp. St. Supp. 1911, p. 1506), added that, for the purpose of such recovery, any court of bankruptcy, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction. *Held* that, since the amendment of Section 23b by Act Cong. June 25, 1910, gave jurisdiction to Federal courts of all suits brought for the recovery of property under specified sections of the Bankruptcy Act, including Section 70e, actions may be brought by a bankrupt's trustee in courts of bankruptcy, in cases within the terms of Section 70e, without the consent of the defendant."

See, further, **Parker vs. Sherman,** 195 Fed. 648; and as indicating generally the jurisdiction of courts of bankruptcy to pass upon claims of liens:

In re Hynes Buggy & Implement Co., 130 Fed. 977; **In re Hecox,** 164 Fed. 823; **New River Coal & Land Co. vs. Huffner Bros.,** 165 Fed. 881; **In re Baughman,** 138 Fed. 742; **In re Oxley,** 183 Fed. 1019.

As noted at the outset of this Appendix, however, whether the bankruptcy court would have had jurisdiction or not by proper proceedings instituted at the proper time is of no logical importance upon the present inquiry, which is confined to the question whether the State Court was compelled to take jurisdiction of a proceeding by garnishment to enforce the plaintiff's alleged lien. Even if the bankruptcy court had no jurisdiction, that fact would not warrant this Court in judicially legislating for the plaintiff in error by revising the Louisiana Code of Practice to meet its needs. Plaintiff in error had, in fact, another remedy open under the law, by the writ of sequestration, which it failed to execute. If its failure to execute it left it without other remedy, its situation would be no more than that which is met by every litigant who fails to employ the proper legal process to vindicate the right which he asserts. The inquiry is immaterial upon the present writ of error, which presents to this Court the sole question whether the State Court should be compelled to proceed with garnishment upon an attachment against an insolvent defendant in the face of immediately supervening bankruptcy.

APPENDIX III.

Decisions Cited by Plaintiff in Error Upon Jurisdiction of This Court Distinguished.

Since our brief proper has been put in type, we have received the proof of a brief to be filed by plaintiffs in error. None of the decisions cited in that brief on the question of jurisdiction of this Court support this writ of error.

In **Nutt vs. Knutt,** 200 U. S. 12, the original defendant in a suit upon a contract in a State court set up that the contract was void under R. S. 3477, prohibiting transfers of claims against the United States. This contention was denied by the State Court, and the defendant then prosecuted a writ of error to this Court. It was properly held that this Court had jurisdiction because the plaintiff in error there, the original defendant below, had himself set up the Federal right and had been denied that right. That case is what this case would have been if the Louisiana Supreme Court had decided adversely to S. Gumbel & Company, Limited, the defendant below and the defendant in error here. Here S. Gumbel & Company, Limited, set up the exemption under the Federal statute, just as the defendant in **Nutt vs. Knutt** set up an exemption under a Federal statute; but here the exemption claimed by S. Gumbel & Company, Limited, was recognized, whereas in **Nutt vs. Knutt** it was denied. **Nutt vs. Knutt** presents, then, the case which would be presented here if the writ of error here were being prosecuted by S. Gumbel & Company, Limited, instead of by Lehman, Stern & Company, Limited. There is no question but that if the State Court had denied S. Gumbel & Company, Limited, the immunity which it set

up under the Federal bankruptcy act, this Court would have had jurisdiction of a writ of error upon the authority of **Nutt vs. Knutt;** but, as all the decisions quoted in our brief proper indicate, it does not follow that because the Court would have had jurisdiction of the writ of error on behalf of S. Gumbel & Company, Limited, if the immunity claimed by them had been denied, that this Court would have jurisdiction of the writ of error in behalf of Lehman, Stern & Company, Limited, who themselves set up no Federal right or immunity, and whose sole complaint is that too much Federal right was granted S. Gumbel & Company, Limited.

The same comment applies to the other cases cited by plaintiff in error in its brief here.

In **California Bank vs. Kennedy,** 167 U. S. 362, the defendant below was a national bank, which set up an exemption or immunity under the national banking law. This exemption or immunity was denied to the defendant, which was, therefore, entitled to a writ of error to this Court. In that case, also, the Federal right had been specially set up and relied upon in the State court by the plaintiff in error. This again, then, is a case such as would be here presented if the claim of immunity set up by S. Gumbel & Company, Limited, under the bankruptcy act had been denied by the State Court, instead of being recognized by it, and if the writ of error here were being prosecuted by S. Gumbel & Company, Limited, instead of by Lehman, Stern & Company, Limited.

In **McCormick vs. Market Bank,** 165 U. S. 534, the plaintiff in error had relied in the State court upon the right of the defendant national bank under the Federal statutes to make the contract sued upon, which claim had been denied by the State Court. In the present case, plain-

tiff in error set up no right under any Federal statute, but was proceeding entirely upon a State statute and State remedies in enforcement thereof, and nothing in the bankruptcy act or any other Federal law gave plaintiff in error any right to the remedy which it sought to enforce, or to have the State Court take jurisdiction of an attachment to enforce a pre-existing lien.

Metropolitan Bank vs. Claggett, 141 U. S. 520, is identical on the jurisdictional point with **California Bank vs. Kennedy.**

In **McNulta vs. Lockbridge,** 141 U. S. 327, the plaintiff in error, who was defendant below, had especially set up in the State court an immunity from suit as a Federal receiver in bankruptcy, under the authority of Federal statutes. This claim of immunity being denied, this Court clearly had jurisdiction of a writ of error. That again would be this case if this writ of error were being prosecuted by S. Gumbel & Company, Limited.

In **Anderson vs. Colkins,** 135 U. S. 483, the defendant below, who was plaintiff in error here, had set up a Federal right under the homestead laws, which was denied by the State Court.

In **Palmer vs. Hussey,** 119 U. S. 96, and **Henneguinn vs. Clews,** 111 U. S. 676, the plaintiff in error had specially set up in the State Court and relied upon R. S. 5117, providing that the debt sued upon should not be discharged by bankruptcy proceedings. This Federal right specially provided for by Federal statute was affirmatively set up in the State court and denied by that Court.

In each and every one of these cases it will thus be seen that plaintiff in error had specially set up and claimed in the State court a Federal right in him-

self, upon which he was relying. In the present case, no Federal right was specially set up in the State court by the plaintiff in error, who relied throughout upon an alleged lien under a State statute and State remedies in enforcement thereof. Neither the bankruptcy act nor any other Federal statute gave the plaintiff in error the right to have the State Court take jurisdiction to enforce an alleged pre-existing lien by garnishment process. The plaintiff in error, therefore, **could not,** in fact, have set up any Federal right, because he could not locate any source of such right; and certainly he **did not** set up in the State court any such Federal right, nor was any denied him.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 146.

LEHMAN STERN & COMPANY, LIMITED, PLAINTIFF IN ERROR,

versus

S. GUMBEL & COMPANY, LIMITED.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

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INDEX.

AUTHORITIES.

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Statement of the Case.

On the 12th day of March, 1912, plaintiff sold to E. Martin & Co., a partnership, 392 bales of cotton for the price of $19,238.53, payable cash. The checks given for the purchase price proved worthless, and on March 13, 1912, plaintiff instituted this suit against E. Martin & Co., and the individual membership thereof, claiming that it has a vendor's lien on all of said cotton to secure payment of the purchase price, as provided by act No. 63 of the acts of the Louisiana legislature of the year 1890. (See Appendix A.) Plaintiff also asked and obtained writs of attachment and sequestration directing the seizure of the cotton and the bills of lading therefor. Among others, S. Gumbel & Co., the Hibernia Bank & Trust Co., and the

New Orleans, Texas & Mexico Railroad Company were made garnishees. They were served with notices of seizure and citation, together with interrogatories requiring them to state what property of Martin & Co. and the individual partners was in their possession, and particularly whether or not they had any of the cotton described in plaintiff's petition, on which it claimed a vendor's lien.

On March 19, 1912, Martin & Co. were adjudicated voluntary bankrupts by the United States District Court for the Eastern District of Louisiana.

None of the cotton described in the plaintiff's petition was seized under the writ of sequestration, but the New Orleans, Texas & Mexico Railroad Company, as garnishee, answered that it had in its possession part of the cotton on which plaintiff asserted its vendor's lien, but that the same was claimed by S. Gumbel & Co., Ltd., as holders of the original bill of lading.

Gumbel & Co. (Tr., p. 18) excepted to the interrogatories propounded to it and to the jurisdiction of the State court on the ground that Martin & Co. and the individual partners had been adjudicated bankrupts by the United States District Court for the Eastern District of Louisiana. The Hibernia Bank & Trust Co. and the receiver in bankruptcy filed similar exceptions. These exceptions were heard by the *nisi prius* judge and overruled and the garnishees ordered to answer the interrogatories propounded to them. No answers have been filed by these garnishees.

Gumbel & Co. applied to the Supreme Court of the State of Louisiana for a writ of prohibition forbidding the *nisi prius* judge and plaintiff from proceeding further in the cause. That court issued a rule *nisi*, and after the case was submitted on brief, as provided by the Louisiana practice, it ordered that "peremptory writs of prohibition issue as prayed for by the relator in his petition." A rehearing was granted and the court maintained its former position.

Plaintiff applied for and obtained a writ of error operating

as a supersedeas to this honorable court, and assigned the following errors, on which we rely:

1. The court erred in deciding that under the National Bankruptcy Act of 1898, section 67, subdivision *f*, all attachments whatsoever taken out within four months of bankruptcy were annulled and made void.

2. That the court erred in deciding that the writ of attachment taken out by plaintiff in error, Lehman, Stern & Company, Limited, against E. Martin & Company, for the purpose of enforcing the five days' vendor's statutory lien granted by Act 63 of Louisiana of 1890 to Lehman, Stern & Company, Limited, was annulled and made void by section 67, subdivision *f*, of the National Bankruptcy Act of 1898, and that the jurisdiction of the Civil District Court of the Parish of Orleans had, by reason of the provisions of the said National Bankruptcy Act, been divested of jurisdiction of and over the suit brought by Lehman, Stern & Company, the controversies therein and the writ of attachment sued out therein.

3. The court erred in that the plaintiff in error, Lehman, Stern & Company, Limited, claimed a privilege and right to recover in said suit and to maintain the writ of attachment it had sued out because said writ of attachment had been sued out to enforce, protect and conserve a valid statutory vendor's lien granted by Act 63 of the Louisiana legislature of 1890 to Lehman, Stern & Company, Limited, as the vendor of agricultural products of the United States to E. Martin & Company, the said suit being brought to recover the purchase price agreed to be paid by said E. Martin & Company to Lehman, Stern & Company, Limited, for cotton, an agricultural product of the United States; that the said National Bankruptcy Act of 1898 expressly recognized and maintained all statutory and all valid liens, and that section 67, subdivision *f*, of the said National Bankruptcy Act only declared null and void any and all liens obtained solely by attachment or other legal proceedings within four months

of bankruptcy, and Lehman, Stern & Company, Limited, not only laid no claim to any lien obtained solely by or through its said writ of attachment or through legal proceedings within four months of bankruptcy, but expressly disclaimed any such liens. That said National Bankruptcy Act, therefore, conceded and granted to Lehman, Stern & Company, Limited, the right to proceed with its suit and attachment proceedings against E. Martin & Company in the Civil District Court for the Parish of Orleans, and the Supreme Court of Louisiana decided against the right, privilege and immunity thus specially set up and claimed.

4. The Supreme Court of Louisiana erred in holding that section 67, subdivision *f*, of the National Bankruptcy Act, declared null and void not only liens obtained by attachment or judicial proceedings, within four months of bankruptcy, but also declared null and void all attachments obtained within four months of bankruptcy, irrespective of whether such attachments were sued out solely to enforce, conserve and protect statutory or valid subsisting liens.

Thus deciding, that court decided against the contrary contention of Lehman, Stern & Company, Limited, and the right, privilege and immunity thus specially set up and claimed.

5. The court erred in holding that the jurisdiction of the Civil District Court was divested by the provisions and effect of the National Bankruptcy Act of 1898 for the further reason that said Civil District Court at the time of the adjudication in bankruptcy did not hold any property of the bankrupt in its physical possession, and that said physical possession of property by said court at the date of adjudication was required under the National Bankruptcy Act for the maintenance of its jurisdiction, because the record shows and the Supreme Court found that under the writ of attachment and garnishment proceedings one of the garnishees admitted having in its possession 52 (fifty-two) bales of cotton, on which Lehman, Stern & Company asserted the ven-

dor's lien, and said fifty-two (52) bales of cotton were thereby subjected to the full and exclusive control of the said Civil District Court; that said court was fully vested with jurisdiction over the same, no court could interfere with or take control from said court, whose control over said property was as effective for purposes of jurisdiction as if it had held physical possession thereof, and the National Bankruptcy Act did not under such circumstances divest the jurisdiction of the Civil District Court or declare null and void the attachment and garnishment issued within four months in aid of and to enforce a lien granted by statute.

6. That the rights of Lehman, Stern & Company, Limited, in its case against E. Martin & Company, in the controversy therein between it and E. Martin & Company and S. Gumbel & Company, Limited, and others, depend upon a question of Federal law, viz., the proper interpretation of the provisions of the National Bankruptcy Act of 1898, and it was and is the purpose of Congress and the aforesaid provisions of the Revised Statutes of the United States that such questions should be finally decided for Lehman, Stern & Company, Limited, by the Supreme Court of the United States, if it so desired, when, as in this case, the decision of the State court has been against Lehman, Stern & Company, Limited, on the question raised, and because rights of this character should not be left to the exclusive and final control of the State courts.

Jurisdiction.

In this case plaintiff is seeking, in proceedings instituted in the State court prior to bankruptcy, to enforce a statutory pre-existing lien on cotton seized herein prior to bankruptcy. At the time of the institution of these proceedings, as there was no diversity of citizenship, the State court was the only court open to plaintiff for the vindication of its rights.

After the adjudication in bankruptcy of Martin & Co. the

defendant in writ excepted to the further jurisdiction of the State court on the ground that that jurisdiction had been divested by that adjudication (Tr., 18) and relied upon section 67*f* of the National Bankruptcy Act.

Under the practice in the State courts of Louisiana no replication or motion to strike out exceptions or the filing of other reply thereto are permitted, but after the Supreme Court of the State had, in its original decision, held that, under section 67*f*, "a State court has no jurisdiction to hold property under an attachment for any purpose," the plaintiff in writ filed an application for a rehearing (Tr., 37), in which it claimed that said subsection struck with nullity only the lien obtained solely through the attachment and did not affect writs of attachment which were employed for the purpose of placing the property *in custodia legis*, of which the present proceeding is an instance. In other words, plaintiff in writ contended that though section 67*f* struck with nullity the lien obtained by or through an attachment issued within four months of bankruptcy it did not affect, and therefore granted an immunity in favor of, attachments or judgments or other writs, the purpose of which was to enforce a statutory pre-existing lien, even though they be issued within four months of bankruptcy. In effect, therefore, the plaintiff contended that under the terms of the Bankruptcy Act a judgment could not be rendered against it by the State court. On this application a rehearing was granted and the State Supreme Court decided adversely to this contention.

In the case of McCormick *vs.* Market Bank, 165 U. S., 538, the plaintiff instituted a suit for rent in the State court against the Market National Bank. An examination of the record will show that the plaintiff's petition set forth an ordinary action for rent, without in any way mentioning or referring to the National Banking Act. The defendant set up that under the National Banking Act the lease sued on was *ultra vires*, its organization never having been

completed. Under the National Banking Act it is provided that no association shall transact any business "except such as is incidental and necessarily preliminary to its organization until it has been authorized by the Comptroller of the Currency to commence the business of banking." On an agreed statement of facts the plaintiff asked the State court to make certain findings of law, which it refused to do. This court held (p. 546):

> "The plaintiff, in the courts of the State, and by his assignment of errors filed with the writ of error sued out from this court, specially set up and claimed a right to recover, so far as concerned the construction of that section of the statute.
>
> "His first ground was that the execution of the lease by the defendant was "incidental and necessarily preliminary to its organization, and therefore within the exception of the last clause of the section in question. As to that ground, the case stands thus: The defendant relied on the prohibition to transact any business until it had been authorized by the Comptroller of the Currency to commence the business of banking. THE PLAINTIFF RELIED ON THE EXCEPTION OUT OF THAT PROHIBITION. The decision against the plaintiff, therefore, was a decision against a right claimed by him under a statute of the United States."

An exception to a prohibition is just as clearly and effectively established by Congress when it results from the affirmative language used, as when it is placed after the word "except" or the words "provided that this act shall not apply to, etc." Now Congress, by providing (Bankruptcy Act, 67*f*) that all "judgments, attachments, etc.," conferring liens or through which liens were sought to be obtained, within four months of bankruptcy, "shall be deemed null and void" effectively provided, even though it be by implication, that if by the judgment or attachment a valid pre-existing statutory lien was sought to be enforced, then such proceedings should not fall.

"A judgment or decree in enforcement of an otherwise valid pre-existing lien is not the judgment denounced by the statute, which is plainly confined to judgment creating liens." Metcalf *vs.* Barker, 187 U. S., 165, 175.

Plaintiff contends that by the terms of section 67*f* of the National Bankruptcy Act, its right to proceed in the State court is not affected, and that by providing that certain proceedings should fall, of which this is not one, immunity from its provisions was granted to such a suit as this, and that under the terms of the National Bankruptcy Act no judgment against it could be rendered against it, all of which was denied by the Supreme Court of Louisiana.

"One who sets up a Federal statute as giving immunity from a judgment against him, which claim is denied by the decision of a State court, may bring the case here for review under §709 of the revised statute, now §237 of the judicial code." Straus *vs.* Am. Publishers Ass'n, 231 U. S., 222, 233.

"And of course, as the cause of action alleged was exclusively placed on the Federal statute and the defense thereof alone involved determining whether there was liability under the statute, the mere statement of the case involved the Federal right and necessarily required, from a general point of view, its determination." St. Louis & Iron Mt. Ry. *vs.* McWhirter, 229 U. S., 265, 275.

"It is insisted that the writ of error should be dismissed because no Federal question is involved. The contention, however, is without merit, since repeatedly during the trial the plaintiffs objected to the admission of all evidence bearing upon the location of the tract in controversy other than the field-notes of the survey under which the plaintiff claimed, which it was contended was the best and only evidence. In passing adversely on these objections the trial court did not merely determine the weight or sufficiency of the evidence to prove a fact, but passed on the competency and legal effect of the evidence as bearing upon the questions of Federal law, viz.

the effect of the requirements of §2396, Rev. Stat., as to the mode of surveying public lands. Thus a Federal question was presented and decided. Dower *vs.* Richards, 151 U. S., 658." Graham *vs.* Gill, 223 U. S., 643.

"The denial by the State court to give to a Federal statute the construction insisted upon by a party which would lead to a judgment in his favor is a denial of a right or immunity under the laws of the United States and presents a Federal question reviewable by this court under §709 Rev. Stat.

"It is only by reviewing in this court the construction given by the State courts to Federal statutes that a uniform construction of such statutes throughout all of the States can be obtained." St. Louis & Iron Mountain Ry. *vs.* Taylor, 210 U. S., 281. (See also page 293.)

"A motion is made to dismiss on the ground that the record presents nothing but questions of fact. It is contended that neither in the pleadings of the bank nor in any way was any right, privilege or immunity under a Federal statute specifically set up or claimed in the State courts. The only questions presented by the pleadings, it is urged, were, did the bankrupt give a preference, and did the bank accept it with reasonable grounds to believe that a preference was intended? The Supreme Court, however, considered the pleadings to have a broader meaning, and answered some of the contentions of the bank by the construction it gave to the bankrupt act. The case, therefore, comes within the ruling in Nutt *vs.* Knut, 200 U. S., 12. It was there said: 'A party who insists that a judgment cannot be rendered against him consistently with the statutes of the United States, may be fairly held within the meaning of §709 to assert a right or immunity under such statutes, although the statutes may not give the party himself a personal or affirmative right that could be enforced by direct suit against his adversary.'" Eau Claire Nat. Bank *vs.* Jackman, 204 U. S., 522, 532.

In that case the only reference in defendant's answer to the Federal Bankruptcy Act was the denial that the alleged

mortgages and payments were given and accepted "contrary to the provisions of the bankruptcy laws." The defendant below was plaintiff in error.

See also:

Nutt *vs.* Knut, 200 U. S., 12.
California Bank *vs.* Kennedy, 167 U. S., 332.
Metropolitan Bank *vs.* Claggett, 141 U. S., 520.
McNulta *vs.* Lochbridge, 141 U. S., 327.
Anderson *vs.* Carkins, 135 U. S., 843.
Palmer *vs.* Hussey, 119 U. S., 93.
Henneguinn *vs.* Clews, 111 U. S., 276.

ARGUMENT AND AUTHORITIES ON THE MERITS.

The assignments of error filed herein may be summarized as follows:

(1) That the State Supreme Court erred in holding that the National Bankruptcy Act (sec. 67*f*) strikes with nullity and is directed at, not only the lien obtained by the writ, but the writ of attachment itself, even though it be employed in aid of a statutory lien existing prior to the issuance of the writ; and

(2) In holding that in order for the State court to obtain jurisdiction over the property seized, that property must be taken into the physical custody of one of its officers.

It will be seen from the following quotations from the decisions of the State Supreme Court that that court held that section 67*f* of the Bankruptcy Act was leveled at the writ itself, irrespective of the purpose for which it was employed.

> (Tr., 35:) "Under said section, which is the supreme law of the land, after an adjudication in bankruptcy, a State court has no jurisdiction to hold property under an attachment for any purpose."
>
> (Syllabus by the court.)

> (Tr., 36:) "Sec. 67 of the United States Bankrupt Act strikes with nullity all attachments sued out against an insolvent within four months prior to the filing of the petition in bankruptcy and wholly discharges and releases the property affected by the attachment, if the insolvent is adjudged a bankrupt. Hence, a State court has no jurisdiction in such a case, to enforce garnishment process under a writ of attachment against property in the hands of a third person, for the purpose of subjecting the same to a vendor's lien and privilege claimed by the plaintiff, but not enforced by the seizure of property under some other writ."

But an examination of the decisions of this and other Federal courts will show that the statute is not directed at the writ of attachment itself, but only at the lien obtained thereby.

In the case of Austin *vs.* O'Reilly, 2 Wood., 670, Mr. Justice Bradley, then on circuit, in construing a similar provision in the Bankruptcy Act of 1867, held that a statutory lien preserved by a writ of attachment was not affected by the adjudication in bankruptcy of the defendant within four months of the issuance of the writ.

And in Henderson *vs.* Mayer, 225 U. S., 631, this court said:

> (P. 637:) "The statute was not intended to lessen rights which already existed, nor to defeat those inchoate liens given by statute, of which all creditors were bound to take notice and subject to which they are presumed to have contracted when they dealt with the insolvent. Liens in favor of mechanics, laborers or contractors are of this character; and although they may be perfected by record of foreclosure within four months of the bankruptcy, they are not created by judgments, **nor are they treated as having been obtained by legal proceedings even when it is necessary to enforce them by form of legal proceeding.**" (Black-letters ours.) * * * "But the courts, dealing specifically with bankruptcy matters, have almost

uniformly held that these statutory preferences are not obtained through legal proceedings, and, therefore, are not defeated through section 67*f* even when registration, foreclosure or levy necessary to their completion or enforcement was within four months of the filing of the petition in bankruptcy."

(P. 639:) "Decisions to the same effect were made under the Bankruptcy Act of 1867 (14 Stat., 517, 522, sec. 14), which dissolved attachments or mesne process within four months prior to the filing of the petition. In Austin *vs.* O'Reilly, 2 Wood., 670, decided in 1875, it appeared that in Mississippi the landlord had no lien, but as in Georgia, was authorized to seize (but by attachment) the tenant's goods wherever found. Justice Bradley, presiding at circuit, said that the landlord's right to a distress at common law was not a strict lien, 'but being commonly called a lien and being a peculiar right in the nature of a lien. * * * the Supreme Court of the United States and most of the district and circuit courts have regarded it as fairly to be classed as a lien, within the true intent and meaning of the Bankruptcy Act,' and that the statutory attachment being in the nature of a common-law distress was not nullified or discharged by the bankruptcy proceedings.

"There is nothing in the act of 1898 opposed to this conclusion. On the contrary, its general provisions indicate a purpose to continue the same policy and an intent, as against general creditors, to preserve rights like those given by the Georgia statute to landlords, even though the lien was enforced and attached by levy of a distress warrant within four months of the filing of the petition in bankruptcy."

Again construing this section, this court said, in reference to judgments obtained within four months of the filing of the petition in bankruptcy:

"In our opinion, the conclusion to be drawn from this language is that it is the **lien created** by a levy, or a judgment, or **an attachment**, or otherwise, **that is invalidated**, and that where the lien is obtained more than four months prior to the filing of the

> petition, it is not only not to be deemed null and void, on adjudication, but its validity is recognized. Where it is obtained within four months, the property is discharged therefrom, but not otherwise. **A judgment or decree in enforcement of an otherwise valid pre-existing lien is not the judgment denounced by the statute, which is plainly confined to judgment creating liens.** If this were not so the date of the acquisition of a lien by attachment or creditor's bill would be immaterial." (Black letters ours.)
>
> Metcalf *vs.* Barker, 187 U. S., 175.

Now, as plaintiff is seeking to enforce a statutory lien, and employed the writ of attachment only for the purpose of seizing the propertp which is burdened with that lien, the Supreme Court of the State of Louisiana erred in holding that:

> (Tr., 35:) "Under said section, which is the supreme law of the land, after an adjudication in bankruptcy, a State Court has no jurisdiction to hold property under an attachment for any purpose."

And:

> (Tr., 35:) "Sec. 67 of the United States Bankruptcy Act strikes with nullity all attachments sued out against an insolvent within four months prior to the filing of the petition in bankruptcy, and wholly discharges and releases the property affected by the attachment, if the insolvent is adjudged a bankrupt."

The name of the writ is of no concern, as Congress was dealing with liens obtained by judicial proceedings and not with the writs which might be employed to enforce valid pre-existing statutory liens by holding the property within the grasp of the State court.

This brings us to the second summary of the assignments of error, to-wit, that the Supreme Court erred in holding that because the seizure by and the possession of the State

court was constructive and not actual and physical, the adjudication in bankruptcy of the defendant divested the State court of jurisdiction to determine the validity, *vel non*, of plaintiff's lien on the cotton seized.

The court said:

> (Tr., 35.) "The plaintiff contends that the cotton was seized under garnishment process, and having thus been brought under the control of the State Court, was subjected to its vendor's lien and privilege.
>
> "Art. 246 of the Code of Practice provides in part as follows: 'The property and effects in the possession of a third person, belonging to the defendant, or debts due by him to such defendant, shall be decreed to be levied as by the sheriff from the date of the service of the interrogatories on such persons.' Such seizure is merely constructive. The property remains in the possession of the garnishee, and the court has no authority to order its delivery to the sheriff until the plaintiff obtains a final judgment against the defendant maintaining the attachment. If the attachment be dissolved, all seizures under the writ, actual and constructive, are necessarily dissolved."
>
> (Tr., 36.) "Counsel for the plaintiff, in their very able and learned brief, have endeavored to bring this case within the purview of authorities, Federal and State, holding that, even after an adjudication in bankruptcy, a State court, in actual possession of property subject to a mortgage, pledge, a statutory lien has jurisdiction to enforce the same by a sale of property."
>
> (Tr., 36.) "This constructive levy on the 55 bales of cotton necessarily fell with the attachment, and the property was released by the force of the Federal Bankrupt Act."
>
> (Tr., 42.) "In the last decision in date, confidently cited by learned counsel, Henderson *vs.* Mayer, Vol. 225 (U. S.), p. 639, the plaintiff had obtained a distress warrant for rent, which is the common law expression in matter of proceeding for rent. There was a direct seizure of the property,

and in that way it was brought within the jurisdiction of the court."

(Tr., 43.) "The State court has never had possession of the property, and that is indispensable to its jurisdiction under the bankruptcy law.

"It would be different if the property had been taken possession of under the writ of sequestration."

It will thus be seen that that court took the view that, in order to preserve the jurisdiction of the State court, in order for the seizure to be effective, the property must actually be in its physical possession through one of its officers and that a constructive seizure was not sufficient.

From the case of Scholefield *vs.* Bradlee, in the 8th Martin, Old Series, p. 510, decided in 1820, down to the present time the Supreme Court of Louisiana has held that by garnishment process the property is placed in *custodia legis* and under the control of the court. And this is all that is necessary to maintain its jurisdiction.

> "The second ground insisted on by these plaintiffs is that their attachment is regular and right while the others are insufficient. The fact on which they rely, in support of that assertion, is that, not content with attaching in the hands of the garnishee the property of the defendant, as did the other creditors, they afterward caused the sheriff to take it into his particular custody. We think, however, not only that an attachment in the hands of a garnishee is sufficient to place the property in the custody of the law, but after service of such an attachment, the sheriff had no right to go and take the property from the garnishee, without a further order of the court, and that by taking it, he has neither bettered the situation of these plaintiffs nor made the condition of the others worse."
>
> Scholefield *vs.* Bradlee, 8 Martin, O. S., 510.

> "By the service of proper process, in the form which the law has prescribed for this particular remedy, the garnishee becomes the custodian of the property for the purposes of the garnishment. The

law does not require for the validity of this species of seizure, that the property should be taken out of the hands of the garnishee."

Dennistown & Co. *vs.* N. Y. Croton & Steam Faucet Co., 12 La. Ann., 732.

"The Code of Practice authorizes the property of the debtor to be attached in whatever hands it may be found, and the attachment is effected by service of the process upon the person having in his possession the property of the debtor."

Grieff & Byrnes *vs.* Betterson, 18 La. An., 349.

Goslan & Co. *vs.* Powell, 38 La. An., 522.

"After service of the interrogatories he (garnishee) had the fund under his control, and, if for one instant of time, it became affected by the service of notice."

Buddig *vs.* Simpson, 33 La. An., 375.

In the case of Gomilla *vs.* Millikin, 41 An., 123, plaintiff proceeded by attachment and garnished Kohler Bros. at 3 p. m. February 27, 1883. Kohler Bros. answered the interrogatories, claiming that the defendant had defaulted on certain contracts with them and that they had a prior right to the funds in their hands on the ground that the default occurred prior to service of garnishment. The court found that the default did not occur prior to the garnishment and held that plaintiff was entitled to the funds on the ground that they had been "seized" prior to the default.

In the case of Lehman & Co. *vs.* Rivers, 110 La., 1079, the plaintiff attached the interest of defendant (an absentee) in a suit then pending. A curator was appointed and notice of seizure was served on him and on the clerk of the court in which the seized suit was pending. It was contended that by the attachment the court did not seize or take anything into its possession or under its control. The sheriff even stated in his return on the writ of attachment, "From

such seizure nothing came into my hands or under my control," but the court said:

> "With reference to the statement of the sheriff in his return on the writ of attachment, we may as well say here that the *ex industria* declaration of the sheriff that nothing came into his hands as sheriff cannot prejudice plaintiff's rights.
>
> "He had legal possession and control through the clerk, who was the custodian, and his contradictory statement cannot have the effect of defeating the purpose of the notice which had been given."

Thus it will be seen, that through an unbroken line of authorities, under the law of Louisiana the court by means of the notice of seizure and service of interrogatories in attachment by garnishment process, the court comes into the legal possession and control of the property of the defendant caught in the hands of third persons. In other words, it is actually seized and the garnishee becomes the custodian for the court, even though he be not its officer. If he disposes of the property seized pending final judgment and execution, like every other custodian, he is responsible for its value.

Now, in order to give the court jurisdiction over property, it is not necessary that it be in the possession of one of its officers bearing the title of sheriff, constable, receiver or the like; it is merely necessary that the property be under its control and subject to its order:

> "So, also, while the general rule to jurisdiction *in rem* requires the actual seizure and possession of the *res* by the officers of the court, such jurisdiction may be acquired by acts which are of equivalent import, and which stand for and represent the dominion of the court over the thing, and in effect subject it to the dominion of the court. Among the latter class is the levy of a writ of attachment or seizure of real estate, which being incapable of removal, and lying within the territorial jurisdiction of the court, is for all practicable purposes brought under

> the jurisdiction of the court by the officer's levy of the writ and return of that fact to the court. So the writ of garnishment or attachment or other form of service, on a party holding a fund which becomes the subject of litigation, brings that fund under the jurisdiction of the court, though the money may remain in the actual custody of one not an officer of the court."
>
> Cooper *vs.* Reynolds, 10th Wallace, 308 (317).

This case was approvingly cited and quoted from in Heidritter *vs.* Elizabeth Oil Cloth Co., 112 U. S., 301, and in that long and familiar line of cases beginning with Pennoyer *vs.* Neff, 95 U. S., 724, in which it has been held that, in the absence of personal service, an absent defendant can only be brought into court by seizure of his property by attachment or similar process, and also holding that when his property is seized by attachment or similar process, the proceedings are in the nature of proceedings *in rem*, and judgment can be rendered against the defendant to the extent of the value of the property attached.

It will thus be seen that prior to the adjudication in bankruptcy the plaintiff applied to the State court, the only court then open to it, to enforce its statutory vendor's lien on the cotton sold to Martin & Co.; that that court seized at least a part of the said cotton, and that the cotton came actually under its control. From the strenuous efforts made by the defendant in writ, S. Gumbel & Co., to avoid being compelled to answer the interrogatories propounded to them, it is fair to assume that the court also seized in their hands some part, if not the entire balance, of the cotton on which plaintiff claims its lien.

We submit, therefore, that this case comes within the principles of law announced in the following decisions:

Metcalfe *vs.* Barker, 187 U. S., 165, in which a trustee in bankruptcy sought to prevent further proceedings in a suit pending in the State court in which the plaintiff was seek-

ing to enforce a lien which was not affected by the adjudication in bankruptcy, and the court said:

> "The State court had jurisdiction over the parties, the subject-matter and possession of the property. And it is well settled that where the property is in the actual possession of the court, this draws to it the right to decide upon conflicting claims to its ultimate possession and control."

In Eyster *vs.* Gaff, 91 U. S., 521, the court held that a proceeding in a State court to foreclose a mortgage or other specific lien was not stayed, nor was the State court divested of jurisdiction by the adjudication in bankruptcy of the defendant.

This same principle has been sustained in the following cases:

In re Seebold, 105 Fed., 910.
Carling *vs.* Seymore Lumber Co., 113 Fed., 490.
In re Kane, 152 Fed., 587.

We therefore submit that the Supreme Court of Louisiana erred in holding that, as the seizure was only constructive, the jurisdiction of the State court was divested by the adjudication in bankruptcy of the defendants.

In the first paragraph of the decision on rehearing the court said:

> "We will not discuss any proposition save that the writ of garnishment does not hold specific property nor does it issue to compel delivery of a specific thing."

An examination of the decision will show that question was not discussed at all, but that the decision was based on the fact that the property seized was not in the physical custody of the sheriff.

That the above proposition was not considered by the court is shown by the following quotation:

> (Tr., 42:) "We have not found any decision under which it is possible to maintain the garnishment in this case. There is only one exception, to wit, Gumbel & Co. *vs.* Beer, 36 An., 494, if it be an exception, as it was not decided by a unanimous court; moreover, it does not involve a construction of the bankruptcy law. The case is not absolutely similar nor pertinent."

In that case, as in this, the plaintiff was seeking to enforce the five-day lien on cotton granted by an act similar to act 63 of 1890, and obtained writs of attachment as well as sequestration, and the court said:

> " 'The affidavit to the first petition was designed to procure the two writs which are not antagonistical the one to the other. *An attachment may issue as well where there exists a lien as where there exists none.* A sequestration always issues when a right to or in property is averred and there is danger of losing it. The concurrence of the averments made was ample authority for the issuance of the writs.'
>
> "The lien claimed is that resulting from the sale of the cotton, the price remaining unpaid and the seizure having taken place within five days. It is not a lien resulting from the seizure by attachment."

Now, if the court intended to hold that under the law of Louisiana we had employed the wrong writ, could it have said that the above decision was neither similar nor pertinent, in the face of the positive statement in the decision that "an attachment may issue as well where there exists a lien as where there exists none"?

Had they intended to hold that we employed the wrong writ, this decision would not only have been pertinent, but it would have to have been overruled. And if this question was being considered, why did the court say (Tr., 43), "moreover, it does not involve a construction of the bankruptcy law"? What effect has the bankruptcy law on the interpretation of the law of Louisiana as to the efficacy of

a writ of attachment to hold and subject property to a statutory lien? It could have no bearing and would not have had in this case had not the State Supreme Court been confused by the mention of the writ of attachment by name in sec. 60*f* of the Bankruptcy Act.

That the court became confused and that it was not familiar with the provisions of the Bankruptcy Act is shown by the following quotation from the decision on rehearing:

> (Tr., 43:) "Whatever rights the plaintiff has will have to be asserted in other proceedings. In other words, the rights of the parties have been transferred and will have to be asserted in the United States courts."

Now if Gumbel & Co. be *bona fide* holders for value of and adverse claimants to the cotton which plaintiff sold to the bankrupt, it cannot (under sec. 70*e* Bankrupt Act) be recovered by the trustee and brought into and under the control of the bankrupt court, and unless it is so brought under the control of that court how can the conflicting claims of Gumbel & Co. and plaintiff in error to that cotton be adjudicated upon by that court? It will probably be urged that as the trustee is authorized to bring any suit which a creditor could bring, the trustee could bring a suit against Gumbel & Co. for the recovery of this cotton. This would be true if Gumbel & Co.'s claim to or in the cotton was based on a fraudulent or voidable transfer or preference, but as set forth above, under sec. 70*e*, if Gumbel & Co. be *bona fide* holders for value, then the trustee would have no right of action against them, and under the well-settled principle of law that a receiver, and the same applies to a trustee, has no interest or right in the determination of the priority among themselves of the claims of creditors of an estate, the trustee could not institute proceedings on behalf of or for the benefit of plaintiff in error.

Therefore, until the position of Gumbel & Co. with regard to the cotton seized in the hands of the New Orleans,

Texas & Mexico Railroad Company, and that in their hands, if any was so caught by the writ of attachment, it cannot be said that the plaintiff's rights have been transferred to and will have to be asserted, in the United States courts, as it may very well be that the rights have never been transferred and could in no event be asserted there. The trustee is a party to these proceedings and can, therefore, fully protect the interests of the general creditors.

From a consideration of the two decisions of the Supreme Court in this case it will become apparent that that court seemed to be of the opinion that the moment a man was adjudged a bankrupt, the State court lost all and every character of jurisdiction over his assets and property, no matter how or where situated. This court has on several occasions taken the opposite view.

Bardes *vs.* Harwarden Bank, 178 U. S., 524.
Eyster *vs.* Gaff, 91 U. S., 521.
Louisville Trust Co. *vs.* Cominger, 184 U. S., 18.
First National Bank of Chicago *vs.* Chicago Title & Trust Co., 198 U. S., 280.

The State court further based its decision on the proposition that:

> (Tr., 43:) "Furthermore, there can be no judgment (against garnishee) before a judgment has been obtained against the defendant. There will never be a judgment rendered in the State court against defendant whose property has been surrendered."

While it is true that no personal judgment can be rendered against defendants, it is also true that a judgment can be rendered in this case as in any other case which is in the nature of a proceeding *in rem*, that is, limiting its effect to the extent of the proceeds of the cotton seized. The judgment involved in Metcalf *vs.* Barker, 187 U. S., 165, was of necessity so limited in its effect; and in the

case of Carling *vs.* Seymore Lumber Company, 113 Fed., 490 (Fifth Circuit, Court of Appeals), where a plaintiff had, prior to bankruptcy, seized in a State court property on only part of which it had an enforceable lien, after bankruptcy, the court held that the trustee could take from the State court only that part of the property not subject to the lien thereon sought to be enforced.

In conclusion, we respectfully urge that the lien we are seeking to enforce is one granted by the law of Louisiana; that prior to the adjudication in bankruptcy the State court seized and took under its control the property on which we assert that lien, and that, therefore, its jurisdiction was not divested or the suit in any way affected by the adjudication in bankruptcy of the defendants, in so far as enforcing the statutory lien is concerned.

We submit, therefore, for the reasons set forth above, the decree of the Supreme Court should be set aside and annulled, and that this honorable court should overrule the exceptions to the jurisdiction of the State court, and should remand the case to the State court for trial and further proceedings in accordance with law.

Respectfully,

DENEGRE, LEOVY & CHAFFE,
Attorneys for Plaintiff.

GEORGE DENEGRE,
VICTOR LEOVY,
HENRY H. CHAFFE,
Of Counsel.

APPENDIX A.

Act 63, Louisiana Legislature for Year 1890.

"SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana,* That any person who may sell the agricultural products of the United States in any chartered city or town of this State, shall be entitled to a special lien and privilege thereon, to secure the payment of the purchase money for and during the space of five days only after the day of delivery; within which time the vendor shall be entitled *to seize the same in whatsoever hands* or place it may be found, and his claims for the purchase money shall have preference over all others, and especially over any warehouse privilege or claim for warehouse charges, or any privilege or claim by the holder of any warehouse receipt. If the vendor gives a written order for the delivery of any such produce and shall say therein that it is to be delivered without vendor's privilege, then no lien shall attach thereto.

"SECTION 2. *Be it further enacted, etc.,* That all laws, and parts of laws, and especially any part of Act No. 156 of the Legislature of 1888, approved July 12th, 1888, in conflict with this act, be, and the same are hereby, repealed."

LEHMAN, STERN & COMPANY, LIMITED, *v.* S. GUMBEL & COMPANY, LIMITED.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 146. Argued January 22, 1915.—Decided February 23, 1915.

This court cannot entertain argument based on the theory that the decision of the highest court of the State is in conflict with the law of the State.

The ruling of the highest court of the State as to enforcement of a vendor's statutory lien is a matter of state law not reversible by this court.

Where the vendor attached within four months, alleging a vendor's lien under the state statute, and the state court holds that the proceedings under the vendor's lien failed for want of possession, the lien is simply that created by ordinary attachment and garnishment and is dissolved by the express provisions of § 67f of the Bankruptcy Act.

Where an inferior state court attempts to proceed under attachment based on a vendor's statutory lien filed within four months of the petition and the Supreme Court of the State holds there is no vendor's lien but only ordinary attachment, a peremptory writ of prohibition against the state court and relegating the parties to the Bankruptcy Court is the proper practice.

132 Louisiana, 231, affirmed.

THE facts, which involve the effect of bankruptcy proceedings on attachments in the state court, are stated in the opinion.

Mr. Henry H. Chaffe, with whom *Mr. George Denegre* and *Mr. Victor Leovy* were on the brief, for plaintiff in error:

Section 67 of the Bankruptcy Act is not directed at the writ of attachment itself, but only at the lien obtained thereby. *Austin* v. *O'Reilly*, 2 Wood, 670; *Henderson* v. *Mayer*, 225 U. S. 631.

A judgment or decree in enforcement of an otherwise valid preëxisting lien is not the judgment denounced by the statute, which is plainly confined to judgments creating liens. *Metcalf* v. *Barker*, 187 U. S. 175.

The name of the writ is of no concern, as Congress was dealing with liens obtained by judicial proceedings and not with the writs which might be employed to enforce valid prcëxisting statutory liens by holding the property within the grasp of the state court. The court below erred in holding that because the seizure of the state court was constructive and not actual and physical, the adjudication in bankruptcy of the defendant divested the state court of jurisdiction to determine the validity, *vel non*, of plaintiff's lien on the cotton seized.

By garnishment process the property is placed in *custodia legis* and under the control of the court. And this is all that is necessary to maintain its jurisdiction. *Scholefield* v. *Bradlee*, 8 Martin, O. S., p. 510; *Dennistown* v.

N. Y. Faucet Co., 12 La. Ann. 732; *Grief* v. *Betterson*, 18 La. Ann. 349; *Goslan* v. *Powell*, 38 La. Ann. 522; *Buddig* v. *Simpson*, 33 La. Ann. 375; *Gomilla* v. *Millikin*, 41 La. Ann. 123; *Lehman & Co.* v. *Rivers*, 110 Louisiana, 1079.

In order to give the court jurisdiction over property, it is not necessary that it be in the possession of one of its officers bearing the title of sheriff, constable, receiver or the like; it is merely necessary that the property be under its control and subject to its order. *Cooper* v. *Reynolds*, 10 Wall. 308, 317; *Metcalf* v. *Barker*, 187 U. S. 165; *Eyster* v. *Gaff*, 91 U. S. 521; *In re Seebold*, 105 Fed. Rep. 910; *Carling* v. *Seymore Lumber Co.*, 113 Fed. Rep. 490; *In re Kane*, 152 Fed. Rep. 587.

Until the position of garnishee with regard to the cotton seized in the hands of the railroad company, and that in their hands, if any was so caught by the writ of attachment, it cannot be said that the plaintiff's rights have been transferred to and will have to be asserted, in the United States courts, as it may very well be that the rights have never been transferred and could in no event be asserted there. The trustee is a party to these proceedings and can, therefore, fully protect the interests of the general creditors.

The state court does not lose all and every character of jurisdiction over the bankrupt's assets and property, no matter how or where situated. This court has on several occasions taken the opposite view. *Bardes* v. *Harwarden Bank*, 178 U. S. 524; *Eyster* v. *Gaff*, 91 U. S. 521; *Louisville Trust Co.* v. *Cominger*, 184 U. S. 18; *First National Bank of Chicago* v. *Chicago Title & Trust Co.*, 198 U. S. 280.

The lien sought to be enforced is one granted by the law of Louisiana; prior to the adjudication in bankruptcy the state court seized and took under its control the property on which the lien is asserted, and, there-

fore, its jurisdiction was not divested or the suit in any way affected by the adjudication in bankruptcy of the defendants, in so far as enforcing the statutory lien is concerned.

Mr. Monte M. Lemann, with whom *Mr. J. Blanc Monroe* was on the brief, for the defendant in error.

MR. JUSTICE LAMAR delivered the opinion of the court.

On March 12, 1912, Lehman, Stern & Company sold to Martin & Company, 392 bales of cotton for the sum of $19,238. The checks given in payment were not honored when presented to the bank, and, on the day after the sale, the Lehman Company brought suit in a state court to obtain a general judgment against Martin & Company and to foreclose the lien, given by the Louisiana statute, on agricultural products "to secure the payment of the purchase money for and during the space of five days only after the day of delivery; within which time the vendor shall be entitled to seize the same in whatsoever hands or place it may be found and his claim for the purchase money shall have preference over all others."

Writs of sequestration and of attachment issued requiring the sheriff to seize the cotton in whatsoever place it might be found, and to attach other property of Martin & Co. and the individual members thereof and hold the same subject to the further judgment and order of the court. The New Orleans Railway Company, Gumbel & Co., and the Hibernia Bank were served with summons of garnishment.

On March 19th the defendants, Martin & Co., were adjudged voluntary bankrupts. On the next day Thompson was appointed Receiver of the bankrupts' estate. Shortly afterwards the New Orleans Railway Company, garnishee, in the state suit, answered that it had in its

possession 83 bales of the cotton mentioned in the pleadings—stating, however, that the cotton was claimed by Thompson, Receiver of Martin & Co., bankrupts, and that he had notified the Railroad Company not to surrender the same.

By virtue of an order of the bankrupt court Thompson, Receiver, thereafter intervened in the suit pending in the state court. Calling attention to the fact that the attachment proceedings had been commenced within four months prior to the petition in bankruptcy, and averring that the action did not involve property within the possession of the court, the Receiver filed a motion "to dismiss the proceedings herein, relegating the parties to the proper court of bankruptcy to determine their conflicting claims." Gumbel & Co., garnishees, also excepted to the jurisdiction of the court on the ground that Martin & Co. had been adjudicated bankrupts. Both of these motions were overruled by the judge presiding in the state court who held that the Bankruptcy Act did not dissolve the vendor's lien; nor did it prevent the court from enforcing that lien against the cotton which had been brought into the custody of the court by means of garnishments served before the bankruptcy proceedings were filed.

Thereupon Gumbel & Co. applied to the Supreme Court of Louisiana for a writ of Prohibition forbidding the Judge of the Civil District Court of the Parish of New Orleans from proceeding further in the cause. The petition set out the history of the litigation, and averred that although § 67f dissolved the attachment, the court below had retained jurisdiction; that the Receiver had given notice that he claimed title to any property of Martin & Co. in the hands of Gumbel & Co. and would proceed to enforce the same by proceedings in the bankrupt court. By reason of these facts, and to avoid conflicts of jurisdiction between the courts, Gumbel & Co. claimed to be entitled to the benefit of the writ of Prohibition forbidding the

judge of the Parish Court from proceeding further in the case as against them, garnishees, and claimants of the cotton under bills of lading issued by the Railway Co. A rule *nisi* issued and was served upon the judge of the Civil District Court. He answered and after argument the Supreme Court of Louisiana ordered that the peremptory writ be issued 'on the ground that as § 67f dissolved the attachment the state court had no jurisdiction to enforce the garnishment process under the writ of attachment for the purpose of subjecting the property to the vendor's lien claimed by the plaintiff.'

A petition for a rehearing having been granted, the court, one judge dissenting, held that unless the state court had possession of the *res* its jurisdiction was destroyed by the bankruptcy proceedings; and as the summons of garnishment did not operate to transfer the cotton from the possession of the garnishee into the possession of the court, there was no jurisdiction to foreclose the vendor's lien. It also held that the state court was without power to afford relief to the attaching creditors who would, therefore, be obliged to have their rights adjudicated in the bankrupt court.

The case having been brought here by writ of error, the plaintiffs cited Louisiana cases in support of the contention that, in their suit for the recovery of the purchase price of agricultural products, they were entitled to an attachment, not only to secure a fund out of which to satisfy a general judgment, but also as a means by which to bring the cotton into court so as to have the vendor's lien foreclosed. In the light of those cases the plaintiffs further insisted that the garnishment operated as a seizure of the cotton; and that while § 67f may have dissolved the lien created by the attachment it did not affect the lien given by statute on the cotton which the garnishment had brought into the legal possession, custody and control of the Civil District Court of the Parish of Orleans.

But this court cannot entertain an argument based on the theory that the decision of the Supreme Court of Louisiana was in conflict with the law of the State. Its opinion in this case is to be taken as conclusively establishing that, in Louisiana, the vendor's lien can only be enforced against property in the possession of the court and also that such possession was not acquired by means of the service of the summons of garnishment.

From this ruling,—on a matter of state law, not subject to review here—it follows that the proceedings in the Civil District Court to foreclose the vendor's lien failed for want of possession of the cotton. That then left the case an ordinary suit for purchase money against Martin & Company, in which an attachment had been levied, on property in the hands of the certain garnishees. But the lien thus created by attachment and garnishment was dissolved by the express provisions of § 67f of the Bankruptcy Act. The judgment granting the peremptory writ of prohibition and relegating the parties to the Bankruptcy Court is therefore

Affirmed.